A

COLLECTION

OF

SELECT CASES

Relating to

EVIDENCE.

By a late BARRISTER at Law.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's Moſt Excellent Majeſty; for **Daniel Browne**, at the *Black Swan* without *Temple-Bar*; and **John Shuckburgh**, at the *Sun* next *Richard's Coffee-Houſe* in *Fleetſtreet*.

M.DCC.LIV.

THE NAMES OF THE CASES.

A.

B.

C.

D.

E.

J.

K.

L.

M.

N.

O.

P.

Q.

R.

S.

T.

U.

W.

Y.

Hilary,

Hilary, eleventh of *William* the Third.

Lane *againſt* Decyburgh.

At Guildhall, before Treby.

Sentence of a Court Martial, in a Matter within their Juriſdiction, is concluſive to the Party.

TRESPASS, Aſſault, Battery and Maihem, in cutting off the Plaintiff's Arm. The Defendant juſtified that he was a Major of a Regiment of Horſe in *Flanders*, and the Plaintiff was a Trooper under his Command: That whilſt the Regiment was in Duty, marching againſt the Enemy, the Plaintiff miſbehaved himſelf, and acted contrary to the Duty of his Place, for which he corrected him according to Martial Law, *prout ei bene licuit. Repl' de injur' ſua propria abſq' tali Cauſa*; and on Trial the Defendant gave in Evidence that after the Beating, *&c.* the Plaintiff complained to the

the Colonel, and on an Hearing before the Council of War the Plaintiff's Petition was diſmiſt, and he ordered to beg the Defendant's Pardon at the Head of the Regiment, which he accordingly did, and the original Judgment itſelf was produced and read and the *Chief Juſtice* ruled that this was concluſive Evidence, for here was a Sentence by a Court Martial, which is a Court taken Notice of by our Law; that Martial Law was a reaſonable Law, and abſolutely neceſſary, *flagrante bello*, and that if ſuch quick Proceedings ſhould not be allowed in ſuch Caſes, an Army might be deſtroyed by Mutiny. The Plaintiff being poor the Defendant conſented to draw a Juror.

The ſame Term.

Griffith *againſt* Pope.

At Guildhall, before Treby 15th February, 1698.

The keeping a Bill three Years is an accepting it for Payment.

GRIFFITH ſold to *Pope* Glaſſes for twenty-five Pounds, for which *Pope* gave him a Bill, drawn by himſelf on one *Samuel Lobs* for the ſame Sum, and *Griffith* gave him a Receipt for the Bill; *Lobs* accepted the Bill, but afterwards proved inſolvent

ſolvent and never paid; and three Years after, and not before, the Plaintiff acquainted the Defendant with it, and then brought an *Indebit. Aſſ.* for the Value of the Glaſſes.

The Defendant on *Non Aſſ.* gave the Delivery of this Bill in Evidence; and the Chief Juſtice directed the Jury, that if this Bill was accepted for Payment, then it was a Good Payment, unleſs refuſed, and the Bill returned, and Notice given to the Drawer in a reaſonable Time: He ſaid the Plaintiff's keeping the Bill ſo long was Evidence of his accepting it as Payment; and accordingly the Jury found for the Defendant.

Eaſter, the eleventh of *William* the Third, *B. R.*

The Bank of England *againſt* Newman.

ASSUMPSIT for ſixty Pounds, Money lent; on *Non Aſſ.* the Defendant gave in Evidence, That one *John Bellamy* a Goldſmith, gave him a Note for ſixty Pounds payable to him or Bearer, at a Day then to come; about a Week before which Day the Defendant, having Occaſion for Money, went and diſcounted it with the Bank

If I deliver a Bill to *A.* for ready Money, without indorſing it, 'tis a Sale of it.

Bank at the usual Rate of Interest, and never indorsed the Bill. *Bellamy* broke about two Months after, having never paid the Money, and the Bank now brought this Action for the Money, and found for the Plaintiff; but a new Trial granted as being a Verdict against Law, *Holt*, Chief Justice, affirming that whatever might be the Practice amongst Bankers, yet the Law is, that if a Note or Bill be payable to me or Bearer, and I negotiate and deliver this for ready Money paid down to me for the same, and not for Money antecedently due, or for Money lent on the Bill; this is a Selling of the Bill like the Selling of Tallies, *&c.* so that if there be an Indorsement thereon, then the Indorsee may have Remedy, provided he demanded the Money within a convenient Time.

The same Term.

West *against* Pasmore.

At Exon, before Turton.

One is Tenant in Common for Years, with another who has the Inheritance, if the

TROVER for several Trees; on Not Guilty, the Case was this: The Plaintiff was Tenant in Fee of one Fourth of a Manor, and the Defendant was Tenant in Common

Common with him of three Parts of the Manor, for a Term of three thouſand Years, without Impeachment of Waſte. The Plaintiff cut down ſeveral Trees, and the Defendant carried them away, pretending that amongſt Tenants in common *Capiat qui capere poteſt*; for which Trees the Plaintiff brought this Action and recovered, becauſe though the Defendant being diſpuniſhable of Waſte, might have cut down what Trees he would; yet the Trees being an inheritable Property, and he having no Intereſt in the Inheritance cannot take the Trees when fallen by him who has the Inheritance.

Party who has the Inheritance falls Wood, the other cannot carry it away, though he has a Power to fall.

The ſame Term.

Thorp *againſt* Fry.

At Saliſbury, before Blencow.

TRESPASS for Meſne Profits accruing ſince an Ejectment brought. The Plaintiff gave in Evidence the Copy of a Recovery in Ejectment on his Demiſe, which the Court allowed to be concluſive Evidence of his Title, and eſtopped the Defendant from controverting it. Then *Prat* and *Keen*, for the Defendant inſiſted, that this Action of Treſpaſs not being brought by the

A Recovery in Ejectment is concluſive Evidence both for Leſſor and Leſſee, in an Action for the Meſne Profits.

the Leſſee or Plaintiff in Ejectment, but by the Leſſor, therefore to ſupport it the Plaintiff ought to prove an actual Entry, and that the Delivery of a Declaration in Ejectment, and the Entry into the common Rule, was not ſufficient; but the Court held that by the Entry into the Rule the Defendant was eſtopped, both as to the Leſſor and Leſſee; ſo that either of them might maintain Treſpaſs for the Meſne Profits, without proving an actual Entry. But it was agreed that there is only Judgment againſt the caſual Ejector, and ſo no Entry into any Rule, there the Leſſor ſhall not maintain Treſpaſs without an actual Entry, as was the Caſe of *Northmore* and *Bawler* at *Exon* Aſſizes.

But where the Judgment is againſt the caſual Ejector, an actual Entry muſt be proved.

Hilary, eleventh of *William* the Third.

Preſly *againſt* Dawkins.

Officer not liable for executing Proceſs where there is a Juriſdiction.

TROVER, The Caſe was, the Plaintiff was Collector of the Window Tax, and for a Neglect in his Duty was fined ten Pounds, and the Defendant being a Conſtable, by Warrant from the Commiſſioners, diſtrein'd for the ten Pounds, and for the Goods Trover was brought, and on the Trial *Darnal* objected that though the Com-

Commiſſioners had Power to aſſeſs a Fine on the Collectors for ſeveral Neglects of Duty, yet not for this particular Neglect; and ſo what the Commiſſioners had done was *Coram non Judice.* But the Court held that ſeeing the Commiſſioners had a Juriſdiction to fine the Collectors in ſome Caſes, therefore the Conſtable was not chargeable, though the Fine was for a Point wherin they had no Juriſdiction. Then the Plaintiff urged, that by the Act the Overplus of the Diſtreſs after Sale was to be returned to him, which not being done, the Action lay for that. But the Court held that for the Overplus Trover did not lie, but Caſe for ſo much Money received to his Uſe, as had been heretofore ruled by *Holt* in a Caſe at *Dorcheſter.* Then ſome further Doubts ariſing, a Juror was withdrawn by Conſent of both Parties.

Trover not maintainable for the Overplus of a Diſtreſs.

Syms *againſt* Cook.

At Winton, July 1700. *before J. Powel.*

CASE, for that the Plaintiff was Copyholder of the Manor of *Merdon*, and had thereby Common in the Common of *Anville* to cut Furze and other Wood for Neceſſaries, and that the Defendant ſuch a Day

One Commoner may have an Action againſt another for a Surcharge, but cannot diſtrain.

Day and Time cut down ſo many Load of Furze, *per quod* the Plaintiff *Communiam ſuam in tam amplo & beneficiali modo habere non potuit* as he ought to have. On Not Guilty the Plaintiff was nonſuit, becauſe he could not prove the Defendant cut the Furze; but on the opening of the Cauſe the Counſel on both Sides agreed this to be the Caſe. The Plaintiff and Defendant were both Commoners in the ſame Common, and the Defendant ſurcharged by cutting too much Furze; and the Queſtion was whether an Action lay for this by one Commoner againſt another; and if it did lie, whether maintainable on this general Declaration? and the Judge held that this Action did lie; for in a late Caſe in *C. B.* where one Commoner diſtrain'd another for Surcharge, and Replevin was brought, after ſeveral Arguments it was held that he could not diſtrain, but allowed by all that he might bring an Action on the Caſe; and the Judge further held that the general Declaration was ſufficient.

Prideaux *againſt* Morrice.

At Dorcheſter, before Mr. Juſtice Powel.

The Recital of an Order of the Houſe of Commons is no Evidence.

CASE for a falſe Return of a Member of Parliament; the Defendant endeavoured to ſhew Bribery after the Vacancy, and

and to prove the Vacancy on the 2d of *January* 1698, produced a Copy of the Speaker's Order dated the 12th of *January* 1698, to the Clerk of the Crown for iſſuing a new Writ, wherein he recited an Order of the Houſe of Commons made the 2d *January*; and ruled that the Order itſelf ſhould be ſhewn, becauſe it may be the Speaker miſtook in the Recital of it, like the common Caſe of a recited Record, which is not proved but by producing the Original.

Harris *againſt* Kelly.

At the ſame Place.

TROVER of an Ewe and Lamb *ut de bonis ſuis propriis*; the Fact on Evidence was this: The Plaintiff was Lord of the Hundred of *Lifton*, and had all Eſtraies therein; the Defendant was Lord of the Manor of *Kelly*, which was a Manor within the Hundred of *Lifton*, and claimed all Eſtraies within the Manor, but had really no Right. The Plaintiff ſeized the Ewe and Lamb within the Manor of *Kelly* as an Eſtray, two Days after the Seiſure whereof the Defendant took away the ſame, pretending that they were his Eſtrays; for which, before the Day and Year expired, the Lord brought this Action; and it appearing

Quære, Whether Trover will lie by the Lord for an Eſtray before the Year and Day be paſſed.

pearing on the Trial that the Defendant had no Title, the Queſtion was whether in this Caſe the Plaintiff had a ſufficient Property to maintain Trover, which the Defendant ſaid he had not, there being two Sorts of Right, *jus Poſſeſſionis*, for which Treſpaſs lies, and *jus Proprietatis* for which Trover lies; that in Treſpaſs Poſſeſſion is ſufficient againſt all but the right Owner, but in Trover a Property muſt be proved.

On the other Side it was urged, That though Trover be an Action of Property, yet to maintain the Action it is not neceſſary to prove a direct and abſolute Property, any ſpecial ſort of Property being ſufficient; as a Man who has Goods for a Pledge, or a Sheriff or Carrier may bring Trover; and a Caſe was cited to be determined by this Judge in the midland Circuit, where an Houſe was blown down, a Stranger took away the Timber, and Leſſee for Life, of the Houſe, maintained Trover againſt him for the ſame, though the general Property of the Timber was in the Reverſioner, becauſe the Tenant for Life had a ſpecial Property therein to make uſe of the ſame, if he would rebuild the Houſe again; which the Judge owned to have been ſo held by him. And in Sir *William Courtney*'s Caſe in *C. B.* he was of Opinion that a Lord who ſeizes Wreck may, before the Year

and Day expired, maintain Trover againſt a wrong doer, becauſe he has more than a bare Poſſeſſion, *viz.* a Poſſeſſion that may turn into a Property; but however this Caſe having never been adjudged, he propoſed to the Defendant either to make a Caſe of it, or have a ſpecial Verdict; but the Action being only to try the Right, the Defendant ſubmitted to a general Verdict for one Penny Damages.

Mich. fourth of *Anne*, *B. R.*

The Queen *againſt* Shipley.

A Conviction for keeping a Still, and diſtilling low Wines was quaſhed, becauſe the ſame Perſon was both Informer and Witneſs, and the Informer intitled to Part of the Penalty. *Eaſter* 12 *Anne*, the Queen againſt *Cobbold*, held ſo likewiſe.

Informer no Witneſs where intitled to Part of the Penalty.

Twelfth of *William* the Third.

Huſſy *againſt* Phidal.

A. Became Bankrupt, and after ſold Goods to the Defendant, and for the Money the Plaintiff ſues as Aſſignee. On Error it was objected that the Sale was void, and

If a Bankrupt ſells Goods, the Aſſignee may bring Trover, or affirm Sale.

and ſo no Debt aſſignable. But by *Holt*, the Commiſſioners might either aſſign the Goods, and then Trover would lie, or affirm the Sale, as they have done in this Caſe; and a Recovery in this Action will be a good Bar to any Action of Trover for the Goods.

Hilary, 12 *William* the Third.

Moor *againſt* Gifford.

If the Ship comes to a Delivery Port, Wages are due, though ſhe was not there delivered, but goes out to Sea again and is loſt.

ACTION upon the Caſe, by a Seaman for Wages, and tried in *London* before the Chief Juſtice, and Verdict for the Plaintiff. The Fact was this: The Ship in which the Plaintiff ſerved was an Interloper, and went from *England* to a Port in the *Eaſt Indies*, and there unloaded the Cargo and took in a new Loading for *England*, and in the way home the Ship was taken by the *French*; but before the Ship went out of *England* the Plaintiff and every other Seaman gave a Bond, that if the Ship did not come back again to *England* they would demand no Wages, any Law, Uſage or Cuſtom to the contrary; and the Chief Juſtice ruled on the Trial, That Freight is the Mother of Wages, ſo that Seamen are not intitled to any Wages till they

they come to a Delivery Port. So if in this Caſe the Ship had been caſt away before ſhe came to the *Indies*, no Wages would be due; but at the firſt Delivery Port Wages are due by the Law; and the Bond given here to the contrary was unreaſonable and againſt the Proviſion made by the Law; or at leaſt he would not ſuffer it to be made uſe of in this Action to ouſt the Plaintiffs of their juſt Demands; but if he thought fit, he might bring an Action on the Bond. And the whole Court, on Motion by Serjeant *Munday* for a new Trial, were of the ſame Opinion, and refuſed to let the Defendants have a new Trial.

Hilary, third of *Anne*.

Layton *againſt* Grindal.

Trover will lie for all the Goods in an Houſe.

IT was held that Trover would lie for all the Goods belonging to ſuch an Houſe, becauſe the Reference to the Houſe had made it reducible to a Certainty.

Hilary, ſecond of *William* and *Mary*, *B. R.*

Elliot *againſt* Danby.

Aſſignee of Bankrupt can grant nothing before Inrollment.

THE Commiſſioners of Bankrupt aſſign a Term, and the Aſſignee before Inrollment makes a Leaſe; and held clearly that though the Deed was afterwards inrolled, yet the Leſſee could not maintain an Ejectment, becauſe the Aſſignee could not leaſe till Inrollment; the Statute running, That the Commiſſioners may ſell by Deed inrolled; ſo that without Inrollment there is no Sale.

Mich.

Mich. fifth of *William* and *Mary.*

Midgely *againſt* Lovelace.

THE Caſe was, There was an Aſſignee of a Reverſion, and an Aſſignee of a Term. The Aſſignee of the Reverſion granted it over, and then brought Covenant againſt the Aſſignee of the Term for Rent incurred before the ſecond Grant; and on Demurrer to the Declaration the Queſtion was, If the Action lay?

The Aſſignee of a Reverſion, who grants over, may maintain Debt, but cannot diſtrain for Arrears in his own Time.

Holt, Chief Juſtice: At Common Law the Aſſignee of the Reverſion, after he had granted it over, might have Debt for the Rent, though he could not diſtrain or bring Waſte, becauſe his Power over the Land was determined. If a Man indeed, who is ſeiſed of a Rent in Fee, grants it over, there he has no Remedy for the Arrears, becauſe Diſtreſs, which was his only Remedy, is loſt by the Aſſignment; but where Rent is reſerved on a Leaſe for Years it is otherwiſe; becauſe Debt will lie upon the Contract, and there the Aſſignee ſhall have it as a Fruit fallen from the Reverſion. Judgment for Plaintiff.

Eaſter,

Eaſter, twelfth of *William* the Third.

Roſier *againſt* Sawkins.

The Maſter of a Ship may turn out any of the Owner's Servants.

TRESPASS for beating his Servant and thruſting him out of the *Graveſend* Boat. The Defendant pleads that the Plaintiff and three others were Part-Owners of the Boat, and appointed him to be Maſter; and that he found the ſaid Servant in the Boat doing Damage. The Plaintiff replied, That he being one of the Owners commanded his Servant to work in the ſaid Tilt-Boat, and gave Notice to the Defendant, and ordered him to permit him in that Service; and on Demurrer Judgment was given for the Defendant, becauſe when a Man is made generally Maſter of a Boat or Ship, he hath thereby the intire Conduct thereof; ſo that the Part-Owners have nothing to do therewith; and he may exclude any Perſon that ſhall offer to come into the Boat without his Licence. The Part-Owners may revoke his Power, but till that be done the Maſter may put in what Man he pleaſes, and the Owners cannot force any Man upon him, for he is in ſome Sort reſponſible for them.

Fourth of *William* and *Mary*.

Williams *againſt* Harriſon.

ASSUMPSIT on the Cuſtom of Merchants againſt Defendant, as Acceptor of a Bill of Exchange. The Defendant pleaded Infancy; to which the Plaintiff demurred, alledging, That where Contracts are eſtabliſhed by Cuſtom, as in the binding one's ſelf Apprentice, Infants ſhall be bound as well as others.

The Cuſtom of Merchants will not hold an Infant to his Acceptance of a Bill of Exchange.

But *by the Court:* Here the Infant is not bound; the Caſe of an Apprentice depends on Cuſtom, but the Law of Merchants is Part of the Common Law; wherefore Judgment for Defendant.

Mich. eleventh of *Anne, B. R.*

Nixon *againſt* Bromham.

THE Defendant having a Note of Sir *Stephen Evans*, payable to him or Bearer on Demand, delivered it to a known Servant of his to receive the Money at Sir *Stephen*'s, and then carry it to the Bank and turn it into Exchequer Notes. The Servant inſtead of going to Sir *Stephen* went to

If a Servant tranſacts Buſineſs in the common Method, it ſhall bind the Maſter, though contrary to his private Inſtructions.

to the Plaintiff on *Saturday* Morning, who gave him Money for the Note, with which he purchaſed an Exchequer Note, and delivered it to the Defendant. On *Monday* Morning Sir *Stephen* ſtopt Payment; and now the Queſtion was whoſe Loſs it was? and the Jury laid it upon the Defendant as taking the Note of Sir *Stephen Evans* to be only a Depoſit.

It was moved for a new Trial, but denied, for that there would be no tranſacting Buſineſs if private Inſtructions between the Maſter and Servant were to be of any avail. The Plaintiff gave him Money for the Convenience of the other, and the Nature of theſe Dealings is to take the Note only *de bene eſſe*. The Maſter has put himſelf into his Servant's Power by this Delivery of the Note into his Hands, and muſt ſtand or fall by what he does.

Trinity, twelfth of *Anne*, B. R.

Smallwood *againſt* Rolfe.

Note within the Statute, though without the Word *Order*.

IT was ruled by the Court in this Cauſe, that a Note to pay to *A.* for Value received, is within the Statute, though without the Word *Order*.

Hil.

Hilary, first of *George*, *B. R.*

Reason *against* Ewbank.

THE Question was, What Evidence is sufficient to deprive the Defendant of the Benefit of the Testimony of Persons named in the *Simul cum* in Trespass; and upon Consultation with all the Judges, it was resolved that the Plaintiff must prove them Guilty and Parties to the Suit, and the latter must be shewn by producing the Original or Process against them, and proving an ineffectual Endeavour to arrest them, or that the Process was lost.

What Evidence takes away the Testimony of those included in the *Simul cum*.

The same Term.

Mortly *against* Day.

A. WAS indebted to *B.* on Bond and Note, and paid Money generally; and it was held by the Court that *B.* may apply it to discharge which he pleases.

He that receives Money may apply the Payment.

The

The ſame Term.

Anonymus.

At Niſi Prius.

Note cannot be given as an Eſcrow.

IT was held that a Promiſſory Note cannot have ſuch a Condition annexed to it, as will make it like a Bond an Eſcrow; for that the Delivery here is not eſſential, as in the Caſe of a Bond.

The ſame Term.

At Niſi Prius.

If Apprentice goes to Sea, the Maſter ſhall have Prize Money as well as Wages.

AN Apprentice went to Sea, and the Maſter recovered his Wages, and alſo Prize Money and ſhort Allowance Money, though it was inſiſted the Prize Money belonged to the Apprentice as a Reward for the Hazard of his Life, and the ſhort Allowance Money, becauſe he was deprived of his neceſſary Proviſion.

Eaſter, firſt of *George*, *B. R.*

Temple *againſt* Wells.

Where an Action lies immediately againſt the Stakeholder.

IT was held by the Court, on a Wager concerning a Thing paſt or certain, an Action

Action will lie againſt the Stakeholder, for one Party muſt be in the right, and has a Title to the Money immediately; otherwiſe if it be referred to the Determination of *J. S.* for then no Action lies 'till he has determined.

Trinity, the firſt of *George*.

Thomas *againſt* Whip.

At Niſi Prius, before Lord Chief Juſtice Parker.

THE Defendant was Nurſe to the Inteſtate, and when he died went off with the Money he had about him, and though this was a wrongful taking, yet the Chief Juſtice held, an Action would lie for Money had and received to the Plaintiff's Uſe; for he would preſume a ſubſequent Agreement to make a Contract of it.

Action lies for Money ſtolen.

Mich. ſecond of *George*, *B. R.*

Sir H. St. John *againſt* Titchburne.

IN Debt for Rent the *Reddendum* was laid generally; and upon *Oyer* it appeared to be made payable at a particular Place, and held well enough, for the Deed is not inconſiſtent with the Deſcription, but only contains ſomething farther.

Declaration on a general *Reddendum*, where the Deed is particular, well enough.

The

The ſame Term.

The City of London *againſt* ——

Old Survey allowed as Evidence of a Toll.

AN Iſſue was directed to try the Right of a Toll of two Pence for every loaden Country Cart paſſing through any of the Bars of the City, claimed by the Corporation of *London*. And in order to prove the *Quantum* of the Toll, and the Particulars for which it was to be paid, the Plaintiffs offered in Evidence an Act of Common Council made in 1611, ordering an Account of all the Tolls and Duties due to the City to be brought into the Chamberlain's Office yearly, and an Account given in the next Year, purſuant thereto, by the Collector at *Biſhopſgate*, wherein the Toll was returned in the Manner it was now claimed, and an Account of the Produce of it.

This was oppoſed by the Defendants, becauſe it was to make out the Plaintiff's Demand by their own Act; but the Chief Juſtice allowed them to be read, and he ſaid the Act of Common Council was only introductory to the other, and to explain the Occaſion of its being made, and that the

the Account was an Evidence of the ſame Nature as an old Rental given in by the Bailiff of the Manor, which had always been allowed as corroborating Evidence; for that the apparent Antiquity of it excluded any Suppoſition of Forgery, and its being made by a Perſon to charge himſelf excluded the Preſumption of Fraud.

Party who may be intereſted no Witneſs.

No Freeman of the City was ſuffered to be examined for the Plaintiff, nor any Farmer near *London* who uſed the Markets, becauſe both intereſted in the Event.

In *C. B.* firſt of *George.*

Boſely *againſt* Sherman.

Where an Inferior Juriſdiction limits a Time to an indefinite Act, it may be done at any Time notwithſtanding.

BY a Private Act of Parliament for erecting a Workhouſe in *Norwich*, Power is given to two Juſtices to make a Rate upon the Inhabitants, to be levied by Diſtreſs and Sale. The Juſtices make a Warrant to levy by ſuch a Day; the Officer diſtrained the Plaintiff's Goods after the Day, who brings Treſpaſs; and on the Trial a Caſe was made, whereon the Sole Queſtion was, Whether the Warrant having reſtrained the Officer to a certain Time (the

Act of Parliament having no ſuch Reſtriction) he could execute the Power after that Time expired; and Lord Chief Juſtice *Eyre* who tried the Cauſe, and had put the Caſe to *Pratt*, was of Opinion with the Plaintiff; but upon the Defendant's Importunity referred it to the Judges of *C. B.* who after three ſeveral Arguments gave Judgment for the Defendant, looking on the Reſtriction in the Warrant as idle and unneceſſary; and the Officers well juſtified under the Act of Parliament, which had not limited the Diſtreſs to any Time, and ought to have been purſued in the Warrant.

The King *againſt* The Alderman, Deputy, and Common Council of the Ward of Farringdon Without.

In 12 *W.* 3. to the ſame Purpoſe.

BY the 13 & 14 *Car.* 2. *c.* 12. a Corporation for Maintenance of the Poor was erected in *London*, conſiſting of the Lord Mayor, Aldermen and fifty-two Citizens who were to certify to the Common Council the Sum neceſſary, and they to proportion the ſame on the ſeveral Wards; and thereupon the Aldermen, Deputy Aldermen, and Common Councilmen of each Ward were to Tax the Inhabitants

according to their Proportions; purſuant to this Act a Certificate was made, that five thouſand Pounds was neceſſary, and the Common Council proportioned the Sum, and then made an Act of Common Council, That the ſeveral Wards ſhould, on or before the 15th of *December* then next, aſſeſs on their reſpective Inhabitants their ſeveral Proportions; all the Wards complied with this except the Ward of *Farringdon Without*, who pretended that the 15th Day of *December* was paſt, ſo that now they had no Authority to make the Aſſeſsment, and to a *Mandamus* returned this for Cauſe; and on Argument the Court were of Opinion, that the Common Council had exceeded their Authority in appointing a Time by which the Aſſeſsment ſhould be made, or at leaſt that it was only directory, and that they had well executed their Power as to what was appointed by the Act; and that this Ward ought to make the Aſſeſsment, and ſo granted a peremptory *Mandamus*.

Hilary, third of *George*, *B. R.*

Long *againſt* Leech.

What is local Evidence.

UPON the Common Affidavit to change the *Venue* from *London* to *Cambridgeſhire*, the Plaintiff undertook upon continuing the Cauſe in *London* to give material Evidence there. The Fact as it appeared upon the Trial was, the Plaintiff was a Vintner in *London*, and uſed to go down every Year and ſell Wine at *Stourbridge* Fair, where the Defendant kept a Publick Houſe: Againſt the Fair Time the Defendant writes to the Plaintiff, that if he thought it worth his while to bring down five Dozen of ſuch a particular Sort of Wine he might be his Chap for it: The Plaintiff brought down the Wine, and the Defendant taſted and agreed for the Price, and had it delivered to him. The Plaintiff inſiſted that the Receipt of this Letter in *London* makes it an Order there, and the Delivery at *Cambridge* was only in Purſuance of the former Agreement.

But it was ſaid *by the Court:* Suppoſe the Defendant had diſliked the Wine, ſurely the Plaintiff could have had no Action, for the Letter was but an Intimation, and no poſitive

poſitive Direction: The Letter without the Contract would have ſignified nothing; but the Contract at *Cambridge* was compleat without the Letter.

Hilary, the third of *George*.

Andrews *againſt* Franklyn.

A Promiſſory Note to pay two Months after ſuch a Ship is paid off, is a Note negotiable and within the Statute; for this is a Thing of a Publick Nature; but the Court ſaid it would not be good in a Bill of Exchange.

Promiſſory Note to pay Money when ſuch a Ship arrives, is negotiable.

The ſame Term.

Pearſon *againſt* Parkins.

IT was ſaid by the Court, That a Releaſe *puis Darrein Continuance* may be pleaded after the Jury are gone from the Bar, but not after they have given their Verdict.

Plea *puis darrein Continuance* not after verdict.

Hilary, the third of *George*.

Godfrey *againſt* Norris.

At Guildhall, before Parker Chief Juſtice.

The Witneſs to a Bond becoming Adminiſtrator *de bonis non* of the obligee, Proof of the Hand allowed.

DEBT upon a Bond; *Non eſt Factum* pleaded, and Iſſue thereupon. The Plaintiff was Adminiſtrator *de bonis non*, of the obligee, and the only ſurviving Witneſs to the Bond; and the Proof given upon this Iſſue was only a Perſon who ſwore to the Hand-Writing, and alſo ſeveral Letters from the Obligor making mention of this Bond. To this it was objected, that the Hand-Writing is not ſufficient Proof where the Witneſs is living, and that it was the Fault of the Plaintiff to bring himſelf under this Incapacity. He might have let another take Adminiſtration *quoad* this Bond; but it was ruled by *Parker* Chief Juſtice, that this was good Evidence, and he liken'd it to the Caſe of a Will where the Witneſs afterwards happens to be a Deviſee under the Will, in which Caſe if there be no other Witneſs, Proof of the Hand is good.

The

The ſame Term.

Lockart *againſt* Graham.

Before King Chief Juſtice.

WHERE there were three Obligors, and the Action brought againſt one of them only, the other Obligor was allowed as a Witneſs to prove the Execution of the Bond by the Defendant, after a Caſe had been made of it, and Conference with *Tracy* and *Dormer* Juſtices.

One obligor Witneſs to prove the Delivery by the other.

Sacheverel *againſt* Sacheverel.

Before the Delegates in Serjeants Inn, the 5th of March 1716.

THE Wife came for Adminiſtration to the Huſband, and the Marriage was conteſted. An Affidavit of the Man himſelf taken extrajudicially before a Surrogate of Doctors Commons, was allowed as Evidence of a Confeſſion.

Extrajudicial Affidavit read.

Trinity, third of *George*, *B. R.*

Croſier *againſt* Ogleby.

TROVER by an Adminiſtrator for Rum taken and converted in the Inteſtate's

Goods taken in the Inteſtate's Life, and kept till his Death, and uſed after-

wards, is a Converſion in his Life.

teſtate's Life; upon the Evidence it appeared, that the Rum was taken in the Inteſtate's Life, but not uſed till after his Death; and this being a Point reſerved, the Queſtion was, Whether this Evidence of not uſing it till the Adminiſtrator's Time would not overthrow the Declaration of a Converſion in the Inteſtate's Life.

And *by the Court:* The Time of uſing the Rum lay in the Breaſt of the Defendant, who ought to have diſcloſed that Matter by his Plea; the taking it in the Life of the Inteſtate, and keeping it till his Death, is a Converſion ſufficient to maintain this Declaration; ſo the Plaintiff had Judgment.

Trinity, the third of *George*.

Dryer *againſt* Mills and others.

At Niſi Prius in Middleſex, before Parker Chief Juſtice.

On Not guilty cannot give Evidence of taking the Goods as a Deodand.

TRESPASS for taking Materials of an Houſe; Not guilty pleaded; and the Chief Juſtice would not admit the Defendant to give Evidence of taking the Goods as a Deodand, becauſe he might have juſtified, and then the Plaintiff would have had an Opportunity to give an Anſwer to it.

The

The ſame Term.

Selwin *againſt* Hore.

DEBT on 5 *Eliz.* for exerciſing the Trade of a Biſket Baker, not having ſerved an Apprenticeſhip; but it was ruled by *Parker* Chief Juſtice, That a Biſket Baker was not within the Statute, which had always been conſtrued ſtrictly, and extends only to Common Bakers. The Plaintiff was called.

Biſket Baker not a Trade within 5 *Eliz.*

Mich. the fourth of *George*, *B. R.*

Jones *againſt* White.

ON a Trial at Bar in a feigned Iſſue, where the Queſtion was *Deviſavit vel non*, to overthrow the Will the Defendant inſiſted, that the Teſtator was *non compos* at the Time of making it, which was the 29th, having ſhot himſelf the 31ſt, and amongſt other Circumſtances the Coroner's Inqueſt, which found him Lunatick, was offer'd to be read, but being oppoſed by the other Side, the Court delivered their Opinions.

Inquiſition given in Evidence.

Parker, Chief Juſtice: The Plaintiff in this Caſe is Executrix, and the Inqueſt for her

her Advantage, ſince the Perſonal Eſtate is ſaved by finding Lunacy, and therefore I think it may be read againſt her. In my Lord *Derby*'s Caſe an Inqueſt *poſt mortem* was allowed to be given in Evidence. If this be read, it will have very little Weight, for it only finds him Lunatick *eo inſtante*, the 31ſt, which is no concluſive Evidence that he was ſo the 29th.

Juſtice *Powys* agreed.

Juſtice *Eyre:* This is a criminal Matter, and ought not to be given in Evidence in a Civil Proceeding. A Verdict in an Indictment of Battery cannot be read in an Action for the ſame Battery. An Inqueſt *poſt mortem* was in the Nature of a Civil Proceeding; but this is Criminal, for it might induce a Forfeiture of the Goods if he had been found *felo de ſe*.

Mr. Juſtice *Pratt:* If a Verdict be given in Evidence, it muſt be between the ſame Parties, and therefore an Indictment which is at the Suit of the King, cannot be read in an Action which is at the Suit of the Party. The Wife is no Witneſs here, as ſhe was before the Coroner; ſo that this would be to read her againſt herſelf. The Reaſon why an Inqueſt *poſt mortem* may be read is, becauſe of the Antiquity of it, or to prove a Pedigree.

The

The Court being divided, it was not read till Mr. Juſtice *Pratt* deſired it might for this Time, being only to inform the Conſcience of the Chancellor, and that nothing might be ſaid to be wanting to clear the Queſtion.

The ſame Term.

Young *againſt* Holmes.

At Niſi Prius in Middleſex.

On Deviſe of a Term to the Executor for Life, there muſt be an Aſſent to take as Legatee.

UPON Not guilty in Ejectment the Caſe was, That Leſſee for Years deviſes the Term to *James Holmes*, his Executor for Life, paying fifty Pounds to *J. S.* Remainder to the Leſſors of the Plaintiff. The Executor died, and his Executrix entered upon the Reſidue of the Term, and poſſeſſed herſelf of the Leaſe.

1. It being proved that the Defendant had the Leaſe in her Cuſtody, and refuſed to produce it; an Attorney who had read it was allowed to give Evidence of the Contents, and the Chief Juſtice ſaid he would intend it made againſt the Defendant, it being in her Power, if it was otherwiſe, to ſhew the contrary.

2. For the Defendant it was inſiſted, and agreed to by the Chief Juſtice, That *James Holmes*

Holmes took the Term as Executor, and not as Legatee, and then the Remainder over was not executed, unleſs the Remainder Men could prove a ſpecial Aſſent thereto, as to a Legacy, which was incumbent on them to do. Upon this they called a Witneſs to prove Payment of the fifty Pounds charged upon the Term in the Hands of the Executor; and this was held a ſufficient Aſſent, and the Plaintiff obtained a Verdict.

The ſame Term.

Douglaſs *againſt* Boddington.

At Guildhall.

Practice in Trover.

IT was ruled by Lord Chief Juſtice *Parker*, in Trover, if the Plaintiff has not his Goods again, the Jury muſt give the Value of the Goods, and Damages for detaining. But if he has had his Goods, then the detaining only is to be conſidered, and if the Defendant will enter into a Rule to deliver the Goods, the Jury find the Damages of detaining only.

The

The ſame Term.

Moor *againſt* Viell.

In Middleſex.

IT was ruled by *Parker* Chief Juſtice, That on a Deviſe of Lands *then* in the Poſſeſſion of the Deviſor, he that claims under the Will muſt prove the Lands to have been in the Poſſeſſion of the Deviſor at the Time of the Deviſe, becauſe if he came to the Poſſeſſion after making the Will, thoſe Lands will not paſs by a general Deviſe of all his Lands; for the Statute only enables Men *having* Lands to deviſe them, ſo that if he has them not, he is out of the Statute, and it is not ſufficient to prove a Dying ſeiſed; hence the Common Form of Pleading is, That the Deviſor was ſeiſed, and being ſo ſeiſed made his Will.

On a Deviſe of Lands in Poſſeſſion, the Poſſeſſion muſt be proved.

The ſame Term.

Fletewode and others *againſt* Caſton.

Before King Chief Juſtice of C. B. in Middleſex.

IN an Action by two Executors, before the Jury was ſworn, the Defendant pleaded

Releaſe *puis Darrein Continuance* how to be pleaded.

pleaded a Releaſe *puis Darrein Continuance* by one of the Plaintiffs. And it was held by the Court to be a Bar to both.

Exception was taken, that it ſhould not be *action' ulterius habere ſeu manutenere*, but *ulterius procedere*, or *ad Caption' Jurat' procedere non Debent*.

But *by the Court:* That was indeed the old way, but this is according to the Modern way. *Lutw.* 1142.

Hilary, fourth of *George*, *B. R.*

Butler *againſt* Maliſſy.

Note to pay jointly or ſeverally, how to be declared upon.

BY the Court: If two Men give a Note jointly and ſeverally, and the Action is brought againſt one only, you may declare generally, that he by his Note promiſed to pay, without taking Notice of the other, and a Note by both will be good Evidence to ſupport the Declaration: And it is the ſame where there are ſeveral Obligors in a Bond, and the Action is againſt one only. So likewiſe if the Note had been to pay fifty Pounds, or one hundred Pounds, in an Action for either, you may declare generally on a Note for ſo much, and give the disjunctive Note in Evidence; for by the Action the Plaintiff has made his Election.

The

The ſame Term.

Lane *againſt* Santeloe.

Before King Chief Juſtice, of C. B. in Middleſex.

CASE for a malicious Proſecution of an Indictment for Felony, *unde acquietat' fuit*, was brought againſt the Proſecutor and the Juſtice who committed; and the Jury gave two hundred Pounds Damages againſt the Proſecutor, and twenty Pounds againſt the Juſtice; and the Chief Juſtice directed the Verdict to be taken accordingly.

Where there are two Defendants the Jury may give ſeparate Damages.

The ſame Term.

Weſtbrooke *againſt* Strutville.

ON Not guilty in Treſpaſs for an Aſſault, the Defendant gave in Evidence his Marriage with the Plaintiff; to encounter which ſhe proved a former Marriage to one *Weſtbrooke*, who was alive at the Time of her ſecond Marriage.

Wife *de facto* may bring Treſpaſs againſt Huſband.

It was objected for Defendant, that the Plaintiff ought not to give Felony in Evidence

dence to support her Action; but this was over-ruled, and she had a Verdict.

The same Term.

Strutville *against* ——

Before Parker Chief Justice.

Wife *de facto* a Servant.

WHERE a Woman marries a second Husband, living the first, and the second not privy; as to what she acquires by her Labour during the Cohabitation, the Chief Justice said he would esteem her as a Servant to the second Husband, who is intitled to the Benefit of her Labour.

The same Term.

Anonymus.

Warrant of Justices excuses Constable.

TRESPASS against a Constable for entering the Plaintiff's House and taking his Goods. On Not guilty, the Defendant gave in Evidence a Warrant of two Justices to levy five Pounds, for that the Plaintiff being Surveyor of the Highways, had not done his Duty in some Particulars which were mentioned, pursuant to 3 & 4 *W.* & *M.* The Chief Justice ruled, that

that the Warrant was a ſufficient Juſtification to the Officer in all Matters within the Juriſdiction of the Juſtices, and therefore he would not put the Defendant to any further Proof. Then the Plaintiff inſiſted, that the Surplus after Sale not being returned, the Defendant, as to this, was a Treſpaſſer from the Beginning. But by Lord Chief Juſtice *Parker:* By the Sale the whole Property was deveſted, and therefore if the Surplus be not returned, you may bring an Action for the Money; but Trover or Treſpaſs will not lie. The Plaintiff was called.

Hilary, fourth of *George*.

Anonymus.

Before Lord Chief Juſtice King, in Middleſex.

CASE upon a Promiſſory Note which ran thus, "I promiſe to pay to *A. B.* "eight Pounds, ſo much being to be due "from me to *C. D.* my Landlady at *Lady-* "*day* next, who is indebted in that Sum "to *A. B.*" Upon the Trial it appeared the Landlady died before *Lady-day*, whereby the Reverſioner became intitled to the Rent, and therefore it was inſiſted for the Defendant, "That the Note was only con- "ditional, for it could not be ſuppoſed he "intended

Promiſſory Note not to be avoided by ſubſequent Accident.

" intended to oblige himſelf to pay the " Rent twice." But the Chief Juſtice held, That as to the Plaintiff, the Death of *C. D.* ſignified nothing, for the Note was due on Demand, and the mentioning upon what Account the Money would be due, for which the Defendant obliged himſelf, can only be taken as an Intention to ſhew he had anſwered the Rent to her if ſhe ſhould come upon him for it when it became due. The Plaintiff recovered.

Eaſter, fourth of *George*.

The King *againſt* Motherſell.

What Corporations Books are Evidence.

ON a Motion for a new Trial on Account of ſome Evidence over-ruled, the Fact appeared to be this: On the Trial of an Information, in Nature of a *Quo Warranto*, the Proſecutor produced in Evidence a Book which appeared to be only Minutes of ſome corporate Acts done ten Years ago, all written by the Proſecutor's own Clerk, who was no Officer of the Corporation; and this being oppoſed by the other Side as having been never kept amongſt or eſteemed as one of the Corporation Books, in which the Entries were always made by the Town Clerk, gave a Suſpicion that this Book was not genuine, and therefore

the Judge, before he admitted it to be read, required an Account where it had been kept for thoſe ten Years, and whether any of the Corporators had ever ſeen it before, which the Proſecutor not being able to clear up, he rejected it.

And *by the Court:* Corporation Books are generally allowed to be given in Evidence when they have been publickly kept as ſuch, and the Entries made by the proper Officer; not but that Entries made by other Perſons may be good, if the Town Clerk be Sick or refuſes to attend; but then that muſt be made appear: Whoever produces a Book muſt eſtabliſh it before he delivers it in. We often make People, when they produce Deeds, give an Account where they have been kept, and how they came by them. Therefore we are of Opinion that this Evidence thus offered was well over-ruled, and conſequently there muſt be no new Trial.

The ſame Term.

Froſt *againſt* Woolveſton, in *C. B.*

Infant Declares the Uſes of a Fine to be ſuffered at full Age, he may then declare new Uſes.

ON Motion for a new Trial the Caſe was, That an Infant covenanted to levy a Fine by ſuch a Time to ſuch Uſes, before the Time he comes of Age, then

the Fine is levied, and by another Deed made at full Age, he declares it to be to other Uſes. The Court held the laſt Deed ſhould be that which ſhould lead the Uſes.

Lloyd *againſt* Lee.

At Guildhall, before Lord Chief Juſtice Pratt.

Forbearance no Conſideration where no Cauſe of Action before.

A Married Woman gives a promiſſory Note as a Feme Sole, and after her Huſband's Death, in Conſideration of Forbearance promiſed to pay it; and now in an Action againſt her it was inſiſted, that though upon Account of her Coverture, when the Note was given, it was voidable for that Reaſon, yet by her ſubſequent Promiſe when ſhe was of Ability to make a Promiſe, ſhe had made herſelf liable; and the Forbearance was a new Conſideration. But the Chief Juſtice held the contrary, and that the Note was not barely voidable, but abſolutely void; and Forbearance, where originally there is no Cauſe of Action, is no Conſideration to raiſe an *Aſſumpſit*; but he ſaid it might be otherwiſe where the Contract was but voidable.

againſt

—— *againſt* Chambers.

IN Trover it appeared the Goods were pawned for ten Pounds. And by *Pratt* Chief Juſtice, if the ten Pounds and Intereſt be tendered, Trover lies. But a Demand upon the Servant will not be ſufficient to ſubject the Maſter to a *Tort*. A Queſtion aroſe about the Manner of the Tender, for Part of the Goods were pawned by the Plaintiff himſelf as his own, and the other Part by his Inteſtate: He tendered the whole Money that both were pawned for, and brought the Action only for the Inteſtate's Goods. And it was held by Lord Chief Juſtice *Prat*, That he ſhould have diſtinguiſhed, for we cannot examine in this Action how much the other were pawn'd for. The Plaintiff was called.

Tender to Servant will not make a Converſion in the Maſter.

Eaſter, fourth of *George*.

Anonymus.

In Middleſex, before Pratt Chief Juſtice.

THE Queſtion in Ejectment being Parcel or not Parcel, a Survey was offered in Evidence on the Plaintiff's Side,

Survey where Evidence.

which was taken by one under whom the Leſſor claimed, and in which the Lands in Queſtion were included; but this being an Act to which the Defendants were not privy, and it being dangerous in encouraging People to take more than their own into a Survey, the Chief Juſtice rejected it.

Trinity, fourth of *George*.

The King *againſt* Arnold.

No Parol Evidence of Appointment of Overſeers.

INdictment againſt Defendants, for that they being Church-wardens, and two others Overſeers duly appointed, did refuſe to join with the Overſeers in making a Poor's Rate; and the Chief Juſtice held the Proſecutor to ſhew an Appointment of the Overſeers under the Hands and Seals of two Juſtices, as the Statute requires, and he rejected Parol Evidence, becauſe he ſaid it muſt be produced that he might judge whether it was a ſufficient Appointment. He quoted *Willoughby* againſt *Dixey* in *C. B.* where a Will entered in the Books of the Spiritual Court to be delivered out to the Executor, was refuſed to be given Evidence of till Application to and Refuſal of the Executor was proved; and the ſame in Sir *Edward Seymore's* Caſe as to a Deed. Defendants acquitted.

The

The ſame Term.

Baker *againſt* Lord Fairfax.

ON an Iſſue out of Chancery one of the Witneſſes, after his Depoſitions taken, became intereſted, and confeſſing it now upon a *voire dire*, he was rejected. Then it was deſired to read his Depoſitions as if he was dead, and a Caſe was urged where in Chancery a Witneſs was made Executor, and revived the Suit, and was read at the hearing. But the Chief Juſtice remembered the Caſe in *Salk.* 286, which was the Reſolution of two Courts on a Trial at Bar, and ſo he refuſed to hear the Depoſitions.

Depoſitions taken before, no Evidence after Witneſs becomes intereſted.

Mich. fifth of *George.*

Ramſden *againſt* Ambroſe.

At Guildhall, before Pratt Chief Juſtice.

THE Huſband and Wife lived ſeparate, ſhe boarded in the Plaintiff's Houſe, who declares againſt the Huſband as for Meat and Drink found and provided for the Huſband. On the Evidence it appeared to be for the Wife; and the Chief Juſtice held it did not ſupport the Declaration; for

Where Huſband and Wife live ſeparate, cannot declare as for Meat found and provided for him.

though the Husband is chargeable upon his implied Contract for what Necessaries are administred to the Wife, and therefore if Goods are delivered to her, the Vendor may declare generally for Goods sold and delivered; yet in this Case the Plaintiff fails in his Description of the Subject Matter of that Contract; so that where he now declares generally, a Recovery in this Action could not be pleaded in Bar to a special Action for Meat and Drink found and provided for the Wife.

In *Trinity* Term the 12th of King *George*, the like Determination was made by Lord Chief Justice *Eyre* in the Common Pleas, between *Hadley* and *Collins*.

The same Term.

Amies *against* Stevens.

Carrier not answerable for Goods lost by Tempest.

THE Plaintiff puts Goods on Board the Defendant's Hoy, who was a Common Carrier; coming through Bridge, by a sudden Gust of Wind the Hoy was drove against the Bridge and sunk, and the Goods were spoiled. The Plaintiff insisted that the Defendant should be liable, it being his Carelessness in going through Bridge at such a Time, and offered some Evidence, that if the Hoy had been in better Order it would

would not have ſunk with the Stroke it received, and from thence inferred the Defendant to be anſwerable for all Accidents, which might have been prevented if the Goods had been put into a better Hoy. But the Chief Juſtice held the Defendant not liable, the Damage being occaſioned by the Act of God, which no Care of the Defendant could either foreſee or prevent; and though the Defendant ought not to have ventured to ſhoot the Bridge, if the general Bent of the Weather had been tempeſtuous; yet this being a ſudden Guſt of Wind had intirely differ'd the Caſe: And no Carrier (he ſaid) was obliged to have a new Carriage for every Journey; it is ſufficient if he provides one which, without any extraordinary Accident, (ſuch as this was) will probably perform the Journey.

The ſame Term.

Buſhel *againſt* Miller.

That which makes a Man a Treſpaſſer may not amount to a Converſion.

UPON the Cuſtom-houſe Key there is an Hut where particular Porters put in ſmall Parcels of Goods, if the Ship is not ready to receive them when they are brought upon the Key: The Porters who have a Right in this Hut have each particular Boxes or Cupboards, and as ſuch the

Defendant had one. The Plaintiff being one of the Porters, puts in Goods belonging to *A.* and lays them ſo that the Defendant could not get to his Cheſt without removing them; he accordingly does remove them about a Yard from the Place where they lay towards the Door, and without returning them into their Place goes away, and the Goods are loſt. The Plaintiff ſatisfies *A.* of the Value of the Goods, and brings Trover againſt the Defendant; and upon the Trial two Points were ruled by the Chief Juſtice.

Firſt, That the Plaintiff having made Satisfaction to *A.* for the Goods, had thereby acquired a ſufficient Property in them to maintain Trover.

Secondly, That here was no Converſion in the Defendant. The Plaintiff, by laying the Goods where they obſtructed the Defendant from going to his Cheſt, was in that Reſpect a Wrong-doer; the Defendant had a Right to remove the Goods, ſo that thus far he was in no Fault; then as to the not returning the Goods to the Place where he found them, if this was in Action of Treſpaſs, he ſaid there might be ſome Doubt, but he was clear it would not amount to a Converſion.

The

The ſame Term.

Fotheringham *againſt* Greenwood.

A. HAVING Money of the Plaintiff's in his Hands loſes it at Play: The Plaintiff brings an Action after the three Months upon the Statute 9 *Anne*, *c.* 14. and produces *A.* as a Witneſs. Upon a *voire dire* he confeſſed, that if the Plaintiff recovered he did not ſuppoſe he would come upon him for the Money; but if he failed, then he expected the Money imbeziled would be deducted out of his Fortune in the Plaintiff's Hands.

He that apprehends himſelf intereſted, though *ſtricto jure* he was not, is no Witneſs.

And it was held by Lord Chief Juſtice *Pratt*, Though, *ſtricto jure*, the Recovery againſt the Defendant will not ſink the Plaintiff's Demand againſt *A.* yet his Apprehenſion that the Plaintiff will not trouble him for it is a Biaſs upon him; for if a Witneſs thinks himſelf intereſted in the Queſtion, though in Strictneſs of Law he is not, yet he ought not to be ſworn. And Serjeant *Darnal* mentioned the Caſe of Mr. *Chapman* of *Bucks*, who owned himſelf to be under an honourary, though not under a binding, Engagement to pay the Coſts. And *Parker*, Chief Juſtice, on ſolemn Debate

bate rejected him; and ſo it was done in this Caſe.

Hilary, the fifth of *George*.

The King *againſt* Cope and others.

In Middleſex, before Pratt Chief Juſtice.

What is Evidence of a Conſpiracy.

THE Huſband, Wife and Servants were indicted for a Conſpiracy to ruin the Trade of the Proſecutor, who was the King's Cardmaker: The Evidence againſt them was that they had at ſeveral Times given Money to the Proſecutor's Apprentices to put Greaſe into the Paſte, which had ſpoiled the Cards, but there was no Account given that ever more than one at a Time was preſent, though it was proved they had all given Money in their Turns. It was objected, that this could not be a Conſpiracy, for two Men might do the ſame Thing without having any previous Communication with one another. But the Chief Juſtice ruled, that the Defendants being all of a Family, and concerned in making of Cards, it would amount to Evidence of a Conſpiracy, and directed the Jury accordingly.

Titch-

Titchburne *againſt* White.

At Guildhall, before King Chief Juſtice,

What Acceptance makes a Carrier liable.

WHO held, that if a Box is delivered generally to a Carrier, and he accepts it, he is anſwerable, though the Party did not tell him there is Money in it. But if the Carrier aſks, and the other ſays no; or if he accepts it conditionally, provided there is no Money in it, in either of theſe Caſes the Carrier would not be liable. *Allen* 93.

Fuller *againſt* Jacob.

At Surry Aſſizes, before Pratt Chief Juſtice.

Conditional Promiſe prevents the Statute of Limitations.

ON *Non aſſ. infra ſex Annos* to Caſe upon a promiſſory Note; the Evidence for the Plaintiff was, that he ſhewed the Note to the Defendant within ſix Years, who denied his Hand, ſaying, "Prove it to be "my Hand, and I will pay you.' And upon the Authority of *Salk.* 29. the Chief Juſtice held it prevented the Operation of the Statute, as much as an expreſs Promiſe; and he ſaid the Reaſon why the Statute muſt be pleaded is, becauſe it only operates as a Releaſe at the Election of the Party.

The

The ſame Term.

Sleigh *againſt* Aynſham.

Where the Juſtices in their Warrant lay unneceſſary Terms upon the Officer, they are not to be regarded.

THE Juſtices, reciting that the Plaintiff had been rated towards Relief of the Poor, and had neglected to pay it, iſſue their Warrant to the Officer impowering him, upon Demand and Refuſal, to levy by Diſtreſs and Sale.

And it was ſaid by Lord Chief Juſtice *Pratt*, Though the 43d of *Eliz.* does not require a Demand after iſſuing the Warrant; yet inasmuch as the Juſtices have tied up the Officer to the Execution of the Warrant in a particular Manner, he muſt ſhew he has purſued it, and made a Demand after Receipt of the Warrant; upon which was mentioned the Caſe of *Boſely* and *Sherman* in the Common Pleas, in the firſt Year of King *George* the firſt, which the Chief Juſtice diſtinguiſhed from this, becauſe he ſaid the Demand here was in the Nature of a Condition precedent; however he ſaid that Caſe was ſo near this, that he would leave it to the Jury, and they found for the Defendant the Officer.

The

The ſame Term.

Pitton *againſt* Walter.

Poſtea, where Evidence.

IT was ſaid by Lord Chief Juſtice *Pratt*, that the bare Producing the *Poſtea* is no Evidence of the Verdict without ſhewing a Copy of the final Judgment; becauſe it may happen the Judgment was arreſted, or a new Trial granted; but it is good Evidence that a Trial was had between the ſame Parties, ſo as to introduce an Account of what a Witneſs ſwore at that Trial, who is ſince dead.

2 Barnes 355

Heralds Books Evidence of a Pedigree.

The Queſtion being whether the Leſſor of the Plaintiff was Heir at Law to him that died ſeiſed; to prove the Pedigree, the Chief Juſtice admitted a Viſitation in 1623, made by the Heralds, entered in their Books and kept in their Office to be read in Evidence. He alſo admitted the Minute Book of a former Viſitation, ſigned by the Heads of the ſeveral Families, which was found in the Library of my Lord *Oxford*, who being a curious Man he ſaid would not have admitted it into his Study, if it were not authentick.

Eaſter,

Eaſter, fifth of *George*.

Atkins *againſt* Berwick.

A Delivery to *A.* to the Uſe of *B.* is not countermandable where there was a Conſideration.

UPON Trial at *Niſi Prius* in *London* a Caſe was made, That the Defendant 7th of *April* ſent Goods, to *A.* who in *May* following finding himſelf in bad Circumſtances redelivered the Goods to a Friend of the Defendant, and ſent him Notice; but before he could ſignify his Agreement to take back the Goods, *A.* became Bankrupt; and now in an Action by the Aſſignee of the Commiſſion, the Queſtion was, Whether the Delivery to the Friend, for the Defendant's Uſe, was countermandable or abſolute; and the whole Court were of Opinion that there being a precedent Conſideration (*viz.* the Debt) *A.* could not countermand, and the Property reveſted in the Defendant till Diſagreement, and the Contract did not ſtand open till Agreement. Judgment for the Defendant.

Eaſter,

Eaſter, the fifth of *George*.

Burroughs *againſt* Caſſeild.

At Niſi Prius in Middleſex, before Pratt Chief Juſtice.

A FEME ſole retained an Attorney and then marries: The Attorney continues to carry on the Suit. And the Chief Juſtice ruled that he ſhould be paid, unleſs they could ſhew Notice of the Marriage, or a Countermand. The Plaintiff had a Verdict.

Attorney retained by a Feme Sole before her Marriage, to be paid.

The ſame Term.

Hudſon and Wife *againſt* Aſh.

THE Plaintiff's Wife was taken up by Warrant of a Juſtice of Peace, for aſſaulting the Overſeer of the Pariſh, and contributing to the Eſcape of a Woman delivered of a Baſtard Child: When ſhe came before the Juſtice ſhe could not find Bail, but at her Requeſt he gave Leave for her to lie that Night at the Conſtable's Houſe, in order to get Bail againſt the Morning: Then one on her behalf demanded a Copy of the Commitment, which not being

Conſtable, within *Habeas Corpus* Act.

being delivered, an Action was brought upon the *Habeas Corpus* Act.

And it was ruled by Lord Chief Juſtice *Pratt*, that the Queſtions are two, Whether the Defendant be an Officer, and whether the Plaintiff's Wife was detained by Virtue of any Warrant within the Meaning of the Statute. As to the Defendant there is no Doubt, but a Conſtable is within the Act; but I do not think this Action is well brought, for the Woman was not in his Cuſtody by Virtue of any Warrant; what Warrant there was, was only to bring her before the Juſtice, and that was fully executed by ſo doing, and the Time ſhe ſtaid at the Conſtable's after that, was not by Virtue of any Warrant or Commitment, but at her own Conſent to remain under a voluntary Cuſtody. Neither is this a Caſe within the Miſchief of the Statute, which was indefinite Commitments. The Plaintiff was called, then the Defendant moved for treble Coſts, being a Conſtable. But the Chief Juſtice would not certify, becauſe this Cuſtody was not in Execution of his Office.

The

The ſame Term.

Turner *againſt* Triſby.

At Guildhall.

IT was held by Lord Chief Juſtice *Pratt*, that Neceſſaries for an Infant's Wife are Neceſſaries for him; but if provided only in Order for the Marriage, he is not chargeable, though ſhe uſes them after.

What are Neceſſaries to charge an Infant.

The ſame Term.

The King *againſt* Wild.

INdictment for a Miſdemeanour in receiving ſtolen Goods knowing them to be ſtolen. Upon the Proſecutor's Evidence it appeared the Felons had been convicted and executed; whereupon it was objected that this Indictment would not lie, being only given by 5 *Anne*, *c.* 31. in Caſe where the Felon cannot be apprehended; for it begins, *Provided that if*, *&c.* which is only a Juriſdiction given under thoſe particular Circumſtances; and of that Opinion was the Chief Juſtice; and the Defendant was acquitted.

A Perſon cannot be proſecuted for a Miſdemeanour in receiving ſtolen Goods, if Felon is to be found.

H: P. C. 205

Trinity, fifth of *George*, *B. R.*

Marſham *againſt* Dutrey.

Average when it ſhall be.

IN an Action by a Maſter of a Ship againſt a Freighter for Contribution; on Motion in Arreſt of Judgment it was held, That if in a Tempeſt the Sails of a Ship are cut down and caſt overboard for its Preſervation, in that Caſe there ſhall be Average, but not for any accidental Loſſes in Sailing, or for Goods rotting in the Ship for want of due Care; and for this the Laws of *Oleron* were cited.

The ſame Term.

The King *againſt* Gill and another.

Not criminally anſwerable for a caſual Damage.

INdictment for throwing down Skins into a Yard, which was a publick way, whereby the Proſecutor's Eye was beat out: On the Evidence it appeared the Wind took the Skin and blew it out of the way, and ſo the Damage happened. The Chief Juſtice remembered the Caſe of the Hoy, wherein it was held, that the Carrier was not anſwerable for Goods loſt by Tempeſt, and that in *Hob.* 134, where in exerciſing one Soldier wounded another, and a Caſe in

in the Year Book, where a Man lopped a Tree, and the Bough was blown at a Diſtance and killed a Man; and in the principal Caſe the Defendants were acquitted.

The ſame Term.

Campden *againſt* Turner.

In Middleſex, before King Chief Juſtice of Common Pleas.

ACTION for Money had and received to the Plaintiff's Uſe, was held to lie againſt an Executor for a Legacy, which he had owned lay ready for the Plaintiff whenever he would call for it. Legacy, recovered in Action.

Mich. ſixth of *George.*

Leighton *againſt* Leighton, *B. R.*

MR. Solicitor General moved, That the Keeper of the Records and Fines in the County of *Monmouth*, might attend the Trial at Bar, with ſome of the original Records to anſwer an Objection that had been made upon a former Trial; That all the Records, were worn out and obliterated. Officer examined as to *Condition*, not Subſtance of Records.

But *by the Court:* We never do it; you may have a Rule for Copies, and though

the Officer cannot be examined as to the Matter of a Record, yet he may give Evidence of the Condition of them in general, without producing them, and that will anſwer the Purpoſe as well.

Hilary, ſixth of *George*.

Arnold *againſt* Johnſon.

In Middleſex, before Pratt Chief Juſtice.

Plaintiff cannot be nonſuit unleſs the Defendant appears.

THE Cauſe was called, and the Jury ſworn; but no Counſel, Attornies, Parties or Witneſſes of either Side appeared.

Serjeant *Whitaker* being aſked his Opinion ſaid, The Plaintiff ought to be called, for the Jury being charged, the Cauſe muſt be carried on to ſome Determination. But the Chief Juſtice ſaid no body had a Right to demand the Plaintiff but the Defendant, and therefore the Defendant not demanding him, he could not order him to be called, but the only way was to diſcharge the Jury. And Mr. *Kettleby* remembered a Caſe where Lord *Parker* did ſo upon the like Accident.

Eaſter,

Eaſter, the ſixth of *George*.

Leighton *againſt* Leighton.

Voidable Act, Evidence.

UPON a Trial at Bar the Defendant made Title under an old Intail, and amongſt other Things offered an Inquiſition *poſt Mortem* in 25 *H.* 8. whereby it was found, That the deceaſed Tenant was ſeiſed in Fee; and upon Traverſe of this it went down to be tried, and found to be only a Seiſin in Tail; upon which Judgment was given, and an *Amoveas manum* iſſued. This was objected to by the Counſel for the Plaintiff, becauſe it was taken and tried in *Salop*, whereas the Lands lay in *Wales*, and this being before the 27th of *H.* 8. which united *Wales* to *England*, was all *Coram non judice* and a Miſtrial; but the Court ordered it to be read, ſaying it was not void, but voidable, and cited *Murrey* and *Wiſe*, where on a Trial at Bar Depoſitions irregularly taken were allowed to be read.

N. B. The ſame Exception was taken on another Trial in the Exchequer, and over-ruled.

Trinity, the sixth of *George*.

Walker *against* Sir Rowland Gwyn.

At Guildhall, before Pratt Chief Justice.

What Evidence of a Witness's not being to be had, is sufficient to intitle the Plaintiff to prove his Hand.

DEBT on a Bond dated in 1689; on *Non est Factum* the Plaintiff proved the Obligor's Hand, and the Hand of one of the Witnesses who was dead; and as to the other Witness, gave an Account, That they had inquired after him, and could not find him, but were informed that such a Person did many Years ago lodge near, and was much in the Company of the Defendant; but the People who remembered that, had not heard any thing of him a great while. And upon this Evidence the Chief Justice directed the Jury to find for the Plaintiff, unless the Defendant could shew the Witness to be alive.

Mich. seventh of *George*.

The King *against* Gwyn, Mayor of Christ-Church.

What Copies of corporate Acts may be given in Evidence.

ON a Trial at Bar the Question was, Whether *A. B.* at the Time he did a corporate Act was an out Burgess or not? And

And to prove he was, the Defendant, who had a Rule for Copies of all the Books and Records of the ſaid Borough, produced a Copy of a Letter fifty Years old, and found in one of the Corporation Cheſts, wherein *A. B.* is mentioned to be of another Place. But the Court refuſed to hear it read, becauſe not a corporate Act within the Rule; ſo that a Copy is not Evidence, but the Original ought to be produced.

Farmer *againſt* Stanton.

At Guildhall, before Pratt Chief Juſtice.

No Preſumption of a different Contract after a ſtated Account.

IN an Action on a ſtated Account it was proved by one Witneſs: The Defendant's Caſe was, that he was a young Man who boarded with the Plaintiff, and that his Father had paid for two Years Board, and therefore ſhould be preſumed to be liable for the reſt, unleſs the Plaintiff could prove a new Contract by the Son. The Chief Juſtice ſaid he would have preſumed that he continued there on the old Contract between the Plaintiff and the Father, if there had not been a ſtated Account; but there being that in the Caſe, he could not but preſume a new Contract; and ſo the Plaintiff recovered.

Poultney

Poultney *againſt* Holmes.

In Middleſex, before Pratt Chief Juſtice.

What an Underleaſe, and what an Aſſignment.

THE Defendant having a Term for Years, whereof one Year and three Quarters was to come, agrees with the Plaintiff that he ſhould have the Premiſſes for the Remainder of the Term, paying to the Defendant the ſame Rent as was reſerved upon the original Leaſe. The Plaintiff took Poſſeſſion, and now brings Treſpaſs againſt the Defendant for a Re-entry.

It was objected, that this amounted to an Aſſignment of the Leaſe, and was therefore void by the Statute of Frauds, not being in Writing; to which the Plaintiff anſwered, That it muſt be taken as a Leaſe, and not as an Aſſignment, becauſe the Reſervation was to the Leſſee, and not to the original Leſſor; and the Leſſee might maintain Debt for Rent upon it, though he could not diſtrain for want of a Reverſion. And of this Opinion was the Chief Juſtice, and the Plaintiff obtained a Verdict.

The ſame Term.

The King *againſt* Pattle.

What a Cottage within the Statute of *Eliz.*

THE Defendant being Owner of ſeveral Houſes in St. *Catherine*'s, let the

Rooms out to ſeveral Families, and for this was indicted upon the Statute about Inmates. But the Chief Juſtice ruled it not a Caſe within the Statute, for the Houſe was not a Cottage, and all the new Buildings about Town would be liable to the ſame Proſecution; there not being four Acres laid to any of them; and he held further, that the Proviſo in the Statute for Market-Towns would take in this Caſe; for in this Reſpect, as far as the Houſes are contiguous, *Wapping* is Part of the Town. In the King againſt *Crockford* in *Trinity* Term following, the Chief Juſtice ruled the ſame in Relation to the Houſes about *Enfield*.

The ſame Term.

Campion *againſt* Nicholas.

THE Cargo of the Ship was loſt by the Capture of a *Swediſh* Privateer who carried her into *Gottenburgh*: The Maſter ſtaid there three Months to refit the Ship and take in new Lading; and to prevent the Seamen from going away, he agreed to pay them ſo much *per* Month whilſt they ſtaid there; and in an Action for this the Maſter would have diſcharged himſelf on the Rule, that Freight is the Mother of Wages, and that none are ever paid whilſt the

The Admiralty Law for Wages may be ſuperſeded by ſpecial Agreement.

the Ship is lading and unlading; which the Chief Juſtice agreed to be the general Doctrine; but however he held it not ſufficient to controul a ſpecial Agreement, as there was in this Caſe, and where too there was ſo long a ſtay at *Gottenburgh*.

Teſhmaker *againſt* Hundred of Edmonton.

In Middleſex, before King Chief Juſtice.

Hundred is liable for Robbery going to Church on a *Sunday*.

THE Plaintiff lived a Mile from the Church, and going thither with his Lady in his Coach, upon a *Sunday*, was robbed, and brought his Action againſt the Hundred, and recovered, the Statute extending only to the Caſe of Travelling. But the Chief Juſtice ſaid, If they had been going to make a Viſit it might have been otherwiſe.

Dutch *againſt* Warren.

At Guildhall, before King Chief Juſtice.

Action for Money had and received to Plaintiff's Uſe lies for Money paid on a Promiſe to transfer Stock at a future Day.

CASE for Money had and received to the Plaintiff's Uſe: The Caſe was, The Plaintiff paid Money on a Promiſe to transfer Stock at a future Day; which not being done, the Plaintiff brought this Action. At the Trial the Doubt was, Whether the Plaintiff

Plaintiff had brought a proper Action, because at the Time the Money was paid, the Plaintiff never intended to have it again, and the Promise to transfer the Stock was a sufficient Consideration for his parting with the Money. The Chief Justice directed the Court should be moved, and they were all of Opinion that the Action was well brought, not for the whole Money paid, but the Damages in not transferring the Stock at that Time, which was a Loss to the Plaintiff, and an Advantage to the Defendant, who was Receiver of the Difference Money to the Plaintiff's Use.

The same Term.

Hawkins *against* Perkins.

Before Pratt Chief Justice.

CASE upon a Note: The Plaintiff called one of the Defendant's Bail to prove the Hand; and whether he was bound to give Evidence was the Question. The Chief Justice said, If he was a subscribing Witness, he would oblige him, but otherwise he would leave him to his Liberty.

Where Bail are obliged to give Evidence.

The

The ſame Term.

Anonymus.

Before King Chief Juſtice.

What is Money received to another's Uſe.

A MAN paid Money on a Contract for the old Stock of a Company, and the Party gave him ſo many Shares in the additional Stock; upon this the other brings his Action for the Money as ſo much had and received to his Uſe; and the Chief Juſtice held it well laid; becauſe the Thing contracted for was not delivered: He ſaid it would have been otherwiſe if the Thing contracted for had been delivered, though to a leſs Value.

Thomas *againſt* Mathews.

In Middleſex, before Pratt Chief Juſtice.

Special Promiſe of Marriage, no Evidence on Declaration of a general one.

THE Plaintiff declares that in Conſideration he promiſed to marry the Defendant, ſhe promiſed to marry him: On the Evidence it appeared the Contract was in this Manner; The Defendant was a Tradeſman's Widow, and agreed to marry the Plaintiff as ſoon as her Widow's Year was up, provided he would carry on her former Huſband's Trade; and this being a ſpecial

ſpecial Promiſe, and the Declaration only on a general one, the Plaintiff was nonſuit.

The ſame Term.

Harrack *againſt* Lowfield.

IN Aſſault the Chief Juſtice held, That the Defendant's coming up to the Plaintiff and holding his Fiſt at him was no Aſſault, but that ſtriking at him, though he miſſed him, would be one. **Aſſault, what.**

Hilary, the ſeventh of *George*, *B. R.*

Shepherd *againſt* Shorthoſe.

IT was held *by the Court*, that if the Probat of a Will be loſt, the Spiritual Court never grants a new Probat, but only exemplify the firſt; and theſe Exemplifications have been always allowed in Evidence. **Exemplification of Probat, good.**

Hawkins *againſt* Perkins.

At Guildhall, before Prat Chief Juſtice.

IN the Debate of this Caſe, which was for Money had and received to the Plaintiff's Uſe, Mr. *Fazakerly* cited this Caſe to have been ruled by Chief Juſtice *King*; *A.* pays to **Money received to Plaintiff's Uſe, what.**

to *B.* one hundred Pounds for a Bill of Exchange on Sir *Joseph Hodges*, who broke before it could be tendered; and he was allowed to recover back the Money from *B.* in an Action for Money received to his Use, though there was a plain Remedy by Action upon the Protest of the Bill.

The same Term.

Dunsley *against* Westbrowne.

Where the Master brings Trespass for beating his Servant, the Servant is no Witness.

TRESPASS for beating his Servant, whereby he lost his Service; and the Plaintiff called the Servant to prove the Case. It was objected, that he having a Right to bring an Action in his own Name, it was in Effect swearing for himself, and he must be under a Byas, because what he says now upon Oath may be given in Evidence against him in his own Action. The Chief Justice inclined to the Objection, so the Plaintiff set him aside; and in the Debate of it the Chief Justice put this Case; A Sailor sues for Wages, and the Question turns upon the Loss of the Ship; no Sailor who has Wages, due shall be a Witness to prove the Salvage of the Ship; because he is concerned in the Event of that Question.

The

The ſame Term.

Lefranc *againſt* Dalbiac.

IN Actions upon promiſſory Notes, brought by the Party to whom payable, the Chief Juſtice would not let the Defendant in to ſhew they were given upon Account of a Contract for Stock not complied with, becauſe it was dangerous in the Caſe of negotiable Notes, and becauſe there was a mutual Remedy.

The Conſideration of a negotiable Note not to be inquired into.

The ſame Term.

Anonymus.

THE Defendant came to the Plaintiff, who was a Sword Cutler, to ſell him a ſecond-hand Sword, and upon his warranting it to be a Silver Hilt, the Plaintiff offered him one Guinea and a half for it. The Defendant refuſed to take the Money, and went to ſeveral other Sword Cutlers, but not meeting with any that would give ſo much as the Plaintiff, he came back to him, and told him he ſhould have it for the Price he offered; the Plaintiff, upon that, thinking to have it cheaper, refuſed to give the Guinea and half, and at laſt beat down

How far a Warranty on a Sale extends.

the Price to twenty-eight Shillings, which was paid the Defendant for the Sword. Afterwards the Plaintiff found that only the Gripe of it was Silver, and the reſt of the Hilt was Braſs, upon which he brings his Action againſt the Defendant, and declares upon a Warranty of the Hilt's being Silver, when in Fact it was but Braſs; but not being able to prove a Warranty upon the ſecond Bargain he was nonſuit; the Chief Juſtice being of Opinion that the Warranty upon the bidding one Guinea and half would not extend to the Sale which was a new and a different Contract at a different Time; alſo he ſeemed to be of Opinion that the Gripe being Silver, the Plaintiff ſhould have declared ſpecially on a Warranty of the reſt of the Hilt only, and have ſaid that that Part was Braſs.

Moor *againſt* Warren.

At Guildhall, before Pratt Chief Juſtice.

Holme *againſt* Barry.

Before King Chief Juſtice, the ſame Place.

In what time a Goldſmith's Bill muſt be tendered.

THE Defendant in each of theſe Actions, at two of the Clock in the Afternoon, gave the Plaintiff's Goldſmith's Notes in Payment, which were tendered the

the next Morning at nine, when the Goldſmith had a quarter of an Hour before ſtopt Payment. The two Chief Juſtices directed the Juries, that the Loſs ſhould fall on the Defendants, there being no Laches in the Plaintiffs, who had demanded their Money as ſoon as was uſual in the Courſe of Dealing, and that the keeping the Notes till next Morning could not be conſtrued a giving new Credit to the Goldſmiths; and both the Juries found accordingly.

Turner *againſt* Mead.

Before Pratt Chief Juſtice.

THE Caſe was, The Defendant paid the Plaintiffs, who were the Swordblade Company, two Goldſmiths Notes at three in the Afternoon. The Plaintiffs Servant next Morning leaves the Notes with the Goldſmiths in order to have the Money got ready for him as he came back a Clearing, it being (as they proved) cuſtomary for the Bank and the Swordblade Company to ſend out their Notes in the Morning, and then call for the Money as their Servant returned in the Evening; and the Goldſmiths, upon receiving the Notes, always cancelled them, and got the Money told out againſt the Time it was uſually called for: The

Goldſmiths Notes tendered the Day after received, held time enough.

Notes in this Case were brought early in the Morning, and received and cancelled, and between four and five in the Afternoon the Servant that left them called again for the Money, when the Goldsmiths had just stopt Payment; upon which the Servant takes new Notes of the same Tenour and Date with the cancelled ones he left in the Morning; and because the Plaintiffs had done nothing but what was usual in leaving the Notes, instead of taking the Money when he first called in the Morning, Chief Justice directed the Jury to find for the Plaintiff; which they did.

The same Term.

Payne *against* Hays.

The Form of a special Agreement must be proved.

THE Plaintiff declared on a Contract to deliver Stock the 22d of *August*, and upon the Trial the Entry in the Broker's Book was a Contract for the opening. The Witness was asked whether at the Time of the Contract it was not notorious that the Books were to open the 22d? which he answered in the Affirmative, and that he took the 22d of *August* and the Opening to be convertible Terms. But the Chief Justice was of Opinion that would not do; and so the Plaintiff was called.

The

The ſame Term.

The King *againſt* Hall.

IN an Information for a Libel the Witneſs for the Crown, who produced it, ſwore that it was ſhewn to the Defendant, who owned himſelf the Author of that Book, Errors of the Preſs and ſome ſmall Variations excepted. The Council for the Defendant objected, that this Evidence would not intitle Mr. Attorney to read the Book, becauſe the Confeſſion was not abſolute, and therefore amounted to a Denial that he was the Author of that identical Book. But the Chief Juſtice allowed it to be read, ſaying he would put it upon the Defendant to ſhew that there were material Variances. The Defendant was convicted.

What owning of a Libel will warrant its being read.

Purret *againſt* Weeks.

At Taunton Aſſizes, before Mr. Baron Price.

THE Defendant was an Exciſeman, and lived in the County of *Devon*, and executed his Office in ſeveral Pariſhes in that County, and alſo in a Pariſh that extended into *Somerſetſhire*; and the Commiſſioners of that County apprehending

Exciſeman to be taxed in the County where he lives.

they had a concurrent Power with the Commissioners of *Devon* to tax him for his Salary, on Account that he executed his Office in their County, they tax him accordingly, and for Non-payment distrain; on which Trespass was brought; and ruled that it well lay, for though he rides about to the publick Houses in that County, yet he must be said to keep his Office in the Town where he lives and has his Books, and there he was only Taxable.

Anonymus.

At Exeter, before Lord Chief Baron Bury.

Payment by one Obligor no Discharge to the other.

DEBT on a Bond; *Solvit ad Diem* pleaded, and on the Evidence it appeared that there was another Obligor who had actually paid the Money; but ruled to be no Proof of the Issue of Payment by the other; *Quære tamen*, for the Release as to one will be a Release as to both. 2 *Rol. Abr.* 412.

Easter, the seventh of *George*.

Seaward *against* Powel.

In Middlesex, before Pratt Chief Justice.

Subscribing Witness must be produced.

IN an Action upon a Promissory Note, there being a subscribing Witness, the Chief

Chief Juſtice would not allow any other to prove the Hand, without ſhewing where the Witneſs was, and that he could not be produced; and this on the general Rule, That the Law requires the beſt Evidence the Thing is capable of.

The King *againſt* Middleton.

At Guildhall, before Pratt Chief Juſtice.

What a Publication of a Libel, and where.

IT was ruled by Lord Chief Juſtice *Pratt*, If the Author at *Cambridge* ſends a Libel to *London* to be printed and publiſhed, 'tis his Act in *London*, if the Publication was there.

Seagood *againſt* Neale.

In Chancery.

What Writing Evidence within the Statute of Frauds.

S. Agreed to ſell an Eſtate to *O.* and wrote to his Agent to deliver the Title Deeds to *O.* he having agreed to diſpoſe of it to him. Afterwards *S.* ſold the ſame Eſtate to *D.* who had Notice of this Tranſaction. *O.* brought a Bill againſt *S.* and *D.* inſiſting that the Letter brought the Caſe out of the Statute of Frauds and Perjuries; but Lord Chancellor held it did not, becauſe the Agreement does not appear in it.

Trinity, ſeventh of *George.*

Buſby *againſt* Greenſlate.

In Middleſex, before Pratt Chief Juſtice.

Deviſee of a Copyhold dying in the Life of the Deviſor avoids the Deviſe.

IN Ejectment the Chief Juſtice ruled this Caſe, *A.* ſurrendered a Copyhold Eſtate to the Uſe of his Will, and then deviſed it to *B.* for Life, and after his Deceaſe to the Heirs of his Body: *B.* died after making the Will (living *A.*) and it was held that the Heir of *B.* could take nothing, for it is a Deviſe in Tail to *B.* and *his Heirs* are Words of Limitation, and then *B.* dying in the Life of *A.* it is the ſame Caſe with *Fuller* againſt *Fuller* in *Cro. Eliz.* and *Goodright* againſt *Right*, and the Chief Juſtice ſaid it made no Difference that thoſe Caſes were of Freehold Lands, and this of Copyhold, where the Deviſee was living at the Time of the Surrender.

Vendor, Witneſs as to Title where no Covenant for Warranty.

In this Caſe a Perſon, who had ſold the Inheritance without any Covenant for good Title or Warranty, was allowed to be a Witneſs to prove the Title of the Vendee.

The

The ſame Term.

Dry *againſt* Sutton.

ACTION againſt the Defendant as a ſingle Woman for Goods ſold and delivered; the Defence was a Marriage with one Major *Twiſtleton* about the Time the Goods were ſold; and upon the Defendant's Evidence it appeared to be a Match ſtruck up on a ſudden, the Lady not knowing ſhe was to be married when ſhe went out, and a ſhort Cohabitation for a Fortnight in a Village about the Town; the Defendant at that Time living in Town, where the Plaintiff alſo lived, and furniſhed her with Goods.

Former Marriage allowed in Evidence againſt a Defence of Coverture.

It was offered for the Plaintiff to encounter this Evidence by proving the Major was married twenty Years ago to another Woman who is ſtill living; and it was objected to on the other Side, as tending to charge him with Felony; but the Chief Juſtice permitted it, the ſecond Marriage being Clandeſtine, and no notorious Cohabitation to enforce a Preſumption, That the Goods were ſold on the Major's Credit; and having fully proved the Marriage, the Chief Juſtice directed the Jury to find for the Plain-

Plaintiff, the Promiſe being made by the Defendant in the Capacity of a Feme Sole.

Jocelyn *againſt* Hawkins.

At Guildhall, before Pratt Chief Juſtice.

In Contracts for Stock the Computation muſt be by Lunar Months.

THE Contract was to deliver Stock one Month after; the Tender was according to the Calendar Month; but the Chief Juſtice ruled it muſt be a Lunar Month, though many Witneſſes were called to prove the Courſe of the Alley to be to reckon according to Calendar Months. So Plaintiff nonſuit. See 4 *Mod.* 185.

Anonymus.

In Middleſex, before Pratt Chief Juſtice.

Action againſt Conſtable where confined to proper County.

TRESPASS and Aſſault. On the Evidence it appeared the Defendant was a Conſtable, and lived at *Dover*, and that being ordered to take the Plaintiff and carry him before the Mayor, he executed his Warrant, and the Mayor diſcharged the Plaintiff; ſoon after which a Diſpute happening between the Plaintiff and the Defendant, the Defendant beat the Plaintiff, for which this Action was brought.

For the Defendant they inſiſted, That he being a Conſtable, they ſhould have brought

brought the Action in the proper County according to 21 *Jac.* 1.

But by *Pratt* Chief Juſtice, That is only where it is for a Matter relating to the Execution of his Office; but if after his Authority is expired, he abuſes the Party, or if he meets a Man and knocks him down, he may be ſued for it, as all other People may.

The ſame Term.

The King *againſt* Jefferies.

KEEBLE's Statutes and *Raſtal*'s differed, and they who were for adhering to *Keeble*, proved that they had examined it with the Parliament Roll. It was objected, That if it is to be read as a Copy, it ought to be upon Stamp; but the Chief Juſtice ruled it was well enough, and ſo *Keeble* was read.

Printed ſtatute Book Evidence.

Mich. the eighth of *George.*

Cary *againſt* Webſter.

At Guildhall, before Pratt Chief Juſtice.

THE Defendant was a Clerk of the *South-Sea* Company, and took in the Payments upon the third Subſcription; the Plaintiff paid him ſix hundred Pounds, and

Maſter and Servant where liable

he by Miſtake never entered it in the Book, but however paid it over to the Company; and the Chief Juſtice ruled, that no Action would lie againſt him: That if he had not paid it over, the Plaintiff would have had his Option either to charge him or the Company; as in the common Caſe of Payment to a Goldſmith's Servant, who does not carry it to the Account of his Maſter, the Party has an Election to go againſt either; he may charge the Servant, becauſe till the Money is paid over, the Servant receives it to his Uſe, or he may paſs by the Servant, and make his Demand upon the Maſter; becauſe the Payment to the Servant is made in Confidence of the Credit given him by the Maſter.

Borrett *againſt* Lyon.

In Middleſex, before Pratt Chief Juſtice.

Where a Fact is doubtful, it ſhall be preſumed againſt the Party who can clear it up.

THE Plaintiff delivered a laced Head to the Defendant (who was at that Time a married Woman) to diſpoſe of for her, and anſwer her the Produce: The Head was ſold, but whether in the Huſband's Life or not, the Plaintiff could not make appear; but in order to charge the Wife, ſhe proved, that after the Huſband's Death ſhe had owned the Diſpoſal of it,

paid one Guinea in Part, and promiſed to pay the reſt; and the Chief Juſtice ruled, That neither the Coverture nor the Statute of Frauds would ſtand in the Plaintiff's way, for he would intend it was diſpoſed of after the Huſband's Death, ſo as to make it a Promiſe for her own Debt, and the Forbearance *prima facie* was a good Conſideration, unleſs the Defendant would ſhew there was no original Cauſe of Action by a Sale in the Life of the Huſband, thereby to turn the Plaintiff over for a Remedy againſt his Executors.

The ſame Term.

Atwood *againſt* Dent.

THE Plaintiff called a Witneſs who was ſet aſide upon an Objection made by the Defendant; but afterwards the Defendant himſelf thought fit to call him, and then the Plaintiff oppoſed his being examined; but the Chief Juſtice ordered him to be ſworn, for he is a good (nay a better Witneſs) for the Defendant, though he is not to be admitted againſt him.

The Party who excepts to a Witneſs may call him afterwards.

The

The ſame Term.

Dickenſon and Wife *againſt* Davis.

In an Action by Baron and Feme the Defendant, on the general Iſſue, ſhall not controvert the Marriage.

TRESPASS by Huſband and Wife for an Aſſault upon the Wife; and on Not guilty, the Defendant would have given in Evidence that the Man had a former Wife ſtill living, and then the Defendant could not be guilty of ſuch a Beating for which the Plaintiff was intitled to Damages; and Not guilty does not go barely to ſay, I did not beat this Woman, but I did not beat the Plaintiff's Wife.

But by *Pratt* Chief Juſtice: I can never allow it; you might have pleaded this in Abatement, and then they would have had an Opportunity to meet you upon that Queſtion; whereas if I was to let you into it now, the honeſteſt Couple in the World may be branded for Adulterers.

The ſame Term.

Moody *againſt* Thurſton.

Act of the Commiſſioners of the Army, concluſive Evidence.

BY the Act for ſtating the Debts of the Army the Commiſſioners have Power to call the Officers and Agents before them, and if it appears there is any Money due from

from one to the other, the Commiſſioners are to give the Party a Certificate, and he may maintain an Action for the Money as upon a ſtated Account. The Plaintiff now produced his Certificate, and the Defendant offered in Evidence his Accounts, by which he ſaid it would appear he had at that Time no Money in his Hands; and beſides, the Commiſſioners had never heard him; but on the firſt Summons made the Certificate, and refuſed to give him Time to produce his Accounts. But the Chief Juſtice would not let him into this Evidence, being of Opinion that the Certificate was concluſive.

The King *againſt* Vincent and another.

At the Old Bailey.

INdictment for forging a Will relating to perſonal Eſtate; and on the Trial a Forgery was proved; but the Defendant producing a Probat, that was held to be concluſive Evidence in Support of the Will.

Probat of the Will, good Defence againſt Forgery.

Hilary, eighth of *George*, *B. R.*

Lord Bernard *againſt* Saul.

ON a Motion for Leave to plead double, the Court declared, That on *Non aſſ.* the

On *Non aſſ.* an uſurious Contract may be given in Evidence.

the Defendant might give in Evidence an uſurious Contract; becauſe that makes it a void Promiſe, but in the Caſe of a Specialty it muſt be pleaded. And at the Trial on the general Iſſue the Defendant was admitted into that Evidence, and the Plaintiff was nonſuit.

Hilary, eighth of *George*.

The King *againſt* Reaſon and Tranter.

Declaration of a dying Man Evidence againſt the Murderer.

ON an Indictment for Murder the Defendants were tried at the Bar; the Counſel for the King were allowed to give in Evidence ſeveral Declarations made by the deceaſed upon his Death-Bed, whereby he charged the Defendants with barbarouſly murdering him; and the Witneſs ſaid, that on a ſecond Examination he, for more Certainty, took down the deceaſed's Words in Writing (a Juſtice of Peace having given him his Oath); but the Original being in the Cuſtody of the Juſtice, it could not be produced, and therefore they offered a Copy of it; whereupon a Debate aroſe, whether this Copy was Evidence or not? The King's Counſel inſiſted, that the firſt Paper being only the Writing of the Witneſs,

neſs, not ſigned by the deceaſed, this which was now produced was as much an Original as that; but the Court refuſed to let it be read, becauſe the Original might have been produced.

It was then objected by the Chief Juſtice, That ſince the written Evidence was not produced, the whole Evidence of the deceaſed's Declarations ought to be rejected; for the firſt, ſecond and third being all to the ſame Effect are but one Fact, of which the beſt Evidence was not produced, and therefore he was of Opinion that we could not be let in to give any Account of the firſt and third Conference. But the other Judges were of Opinion we might, ſaying they were three diſtinct Facts, and there was no Reaſon to exclude the Evidence as to the firſt and third Declaration, merely becauſe we were diſabled to give an Account of the ſecond.

Williams *againſt* Johnſon.

In Middleſex, before King Chief Juſtice.

Wife Witneſs to prove Goods delivered on Huſband's Credit.

THE Plaintiff brought his Action againſt the Daughter's Huſband for her Wedding Cloaths; and the Defence was that the Goods were furniſhed on the Credit of the Father; and to prove this the

Mother who was preſent at the chuſing the Goods was called to charge her Huſband, and allowed.

Clark *againſt* Tyſon.

At Guildhall, before Pratt Chief Juſtice.

Tender of Stock how to be proved.

UPON an Iſſue whether Stock was tendered at the Day, the Plaintiff proved that though the Books were not open to make Transfers in the common Form, yet they were ready at the Office, and upon Leave from a Director there might have been a Transfer, it not being uſual to deny it on ſuch Occaſions; but the Defendant not attending to accept the Stock, the Plaintiff contented himſelf with ſtaying there all Day, but did not actually get Leave from a Director to have the Books open'd if the Defendant ſhould come; and for this Omiſſion the Chief Juſtice ruled it not to be a ſufficient Tender, for there was a Poſſibility that Leave might not be given, and the Plaintiff had not done every thing in his Power: He ought to have prepared Matters ſo that if the Defendant had appeared, there might have been a Transfer immediately.

The

The ſame Term.

Mead *againſt* Hamond.

THE Plaintiff, according to the common Courſe of Dealing, delivered to the Defendant's Servant an Ingot of Gold to Eſſay; and it not being returned he brought Trover againſt the Maſter; and the Chief Juſtice directed the Jury, That the Delivery to the Servant was ſufficient to maintain the Action againſt the Maſter, on proving a ſubſequent Demand and Refuſal; ſo the Plaintiff had a Verdict.

Trover lies againſt the Maſter for Goods delivered to the Apprentice.

Armory *againſt* Delamirie.

In Middleſex, before Pratt Chief Juſtice.

THE Plaintiff, being a Chimney Sweeper's Boy, found a Jewel and carried it to the Defendant's Shop (he being a Goldſmith) to know what it was, and delivered it into the Hands of the Apprentice, who, under Pretence of weighing it, took out the Stones, and calling to the Maſter to let him know it came to three half Pence; the Maſter offered the Boy the Money who refuſed to take it, and inſiſted to have the Thing again, whereupon the Apprentice

Finder of Jewel may bring Trover.

delivered him back the Socket without the Stones; and now in Trover againſt the Maſter theſe Points were ruled.

1. That the Finder of a Jewel, though he does not by ſuch finding acquire an abſolute Property or Ownerſhip, yet he has ſuch a Property as will enable him to keep it againſt all but the rightful Owner, and conſequently may maintain Trover.

2. That the Action well lay againſt the Maſter, who gives a Credit to his Apprentice, and is anſwerable for his Neglect.

3. As to the Value of the Jewel, ſeveral of the Trade were examined, to prove what a Jewel of the fineſt Water, that would fit the Socket, would be worth; and the Chief Juſtice directed the Jury, that unleſs the Defendant did produce the Jewel, and ſhew it not to be of the fineſt Water, they ſhould preſume the ſtrongeſt againſt him, and make the Value of the beſt Jewels the Meaſure of their Damages; which they accordingly did.

Towers *againſt* Sir John Oſborne.

At Guildhall, before Pratt Chief Juſtice.

Executory Contracts not within the Statute of Frauds.

THE Defendant beſpoke a Chariot, and when it was made refuſed to take it; and in an Action for the Value, it

was objected, That they ſhould prove ſomething given in earneſt, or a Note in Writing, ſince there was no Delivery of any Part of the Goods. But the Chief Juſtice ruled this not to be a Caſe within the Statute of Frauds, which relates only to Contracts for the actual Sale of Goods, where the Buyer is immediately anſwerable without Time given him by ſpecial Agreement; and the Seller is to deliver the Goods immediately.

Denniſon *againſt* Spurling.

In Middleſex, before Pratt Chief Juſtice.

IN an Action by an Infant, the Wife of the *Prochein Amy* called, and the Chief Juſtice allowed her to be a good Witneſs.

The Wife of the *Prochein Amy* a Witneſs.

Clutterbuck *againſt* Lord Huntingtower.

THE Defendant's Guardian upon Record called for a Witneſs, and Chief Juſtice *King* would not allow him.

Guardian on Record not.

Bargo *againſt* Williams.

At Guildhall, before Prat Chief Juſtice.

THE Chief Juſtice ruled, that a Skirmiſh at Sea before War actually declared

Skirmiſh at Sea a declaring War within a Policy.

clared, was yet a Declaration of War within the Meaning of a Policy.

Hazard *againſt* Treadwell.

Before Pratt Chief Juſtice.

Where the Maſter is anſwerable for Goods delivered to the Servant on Truſt.

THE Defendant who was a conſiderable Dealer in Iron, and known to the Plaintiff as ſuch, though they had never dealt together before, ſent a Waterman to the Plaintiff for Iron on Truſt, and paid for it afterwards. He ſent the ſame Waterman a ſecond Time with ready Money, who received the Goods, but did not pay for them; and the Chief Juſtice ruled the ſending him upon Truſt the firſt Time, and paying for the Goods, was giving him Credit with the Plaintiff, ſo as to charge the Defendant upon the ſecond Contract.

Snow *againſt* Como.

Where the Plaintiff is nonſuit on the Iſſue, contingent Damages on the Demurrer ſhall not be aſſeſſed.

THERE was a Demurrer to one Count, and an Iſſue on the other, and the *Venire* was awarded as well to try the Iſſue, as to aſſeſs contingent Damages upon the Demurrer. The Plaintiff was nonſuit upon the Iſſue, and the Chief Juſtice would not go on to aſſeſs the Damages, ſaying he had

had no Power ſo to do, the Plaintiff being out of Court.

Brownſon *againſt* Avery.

A. Sells Goods to *B.* and afterwards *C.* deſires *D.* to pay *A.* and promiſes to repay him. *D.* pays *A.* and afterwards *B.* allows the Money to *D.* on Account, and in an Action againſt *C.* *B.* was called to prove the Account (it amounting to Payment); and it was objected, That the Contract being originally between *A.* and *B.* *B.* was ſtill liable to *A.* and was therefore ſwearing to diſcharge himſelf; but the Chief Juſtice ſaid he would allow him to be a Witneſs to prove the Payment, as a Servant to *C.*

Original Debtor taken as a Servant to prove Payment by another.

Shuttleworth *againſt* Bravo.

BY the Bankruptcy Act it is provided, That if the Bankrupt has, within one Year before, loſt five Pounds in one Day at Gaming, he ſhall not have his Certificate, nor the uſual Allowance; and upon an Iſſue out of Chancery to try the Point of Gaming, a Creditor of the Bankrupt was called to prove the Gaming; but the Chief Juſtice would not allow him to be a Witneſs, becauſe he would be intitled to

Creditor of Bankrupt no Witneſs to prove him a Gameſter.

a Share out of the usual Allowance to the Bankrupt, which if he has not, by having forfeited it on Account of Gaming, the Dividend to the Creditor will be the larger.

Johnson *against* Woolyer.

Where in Replevin the Place is material.

REPLEVIN in *London*; Defendant appears upon an *Elongata*, and the Plaintiff declares for taking Guns *in quodam loco vocat'* the *Minories* in *London*; Defendant pleads *non cepit modo & forma*; and at the Trial the Plaintiff proved the Taking at *Rotherhith* in *Surrey*; upon which it was objected, that the Plaintiff had not proved his Issue, for the Place is material, and therefore Part of the Issue under the *modo & forma*. The Counsel for the Plaintiff admitted that it was traversable, but insisted that by not traversing it particularly, the Place was admitted, and could not be insisted on upon *non cepit*; but the Chief Justice held, That where the Plaintiff avows at a different Place, in order to have a Return, he must traverse the Place in the Count, because his Avowry is inconsistent with it; but when he does not insist upon a Return, he may plead *non cepit*, and prove the Taking to be at another Place, for it is material; whereupon the Plaintiff was nonsuit.

Man-

Manwaring *againſt* Harriſon.

Within what Time a Goldſmith's Note muſt be demanded.

UPON the 17th of *September*, (being *Saturday*) about two o'Clock in the Afternoon, *H.* gave to *M.* in Payment, a Note for one hundred Pounds, by *Mitford* and *Mertins* Goldſmiths, dated *September* 5. payable to *H.* or Order; the ſame Afternoon *M.* pays away the Note to *J. S. M.* and *M.* paid all *Saturday* and *Monday*, and on *Tueſday* Morning as ſoon as the Shop was opened, and before any Money paid *J. S.* came and demanded the Money, but *M.* and *M.* ſtopt Payment. The Plaintiff paid back the Money to *J. S.* and demanded it again of *H.* who refuſing to pay it, an Action was brought, and on *Non aſſ.* the Chief Juſtice told the Jury that giving the Note is not immediately Payment, unleſs the Receiver does ſomething to make it ſo, by neglecting to receive it in a reaſonable Time, by which he gives Credit to the maker of the Note. He left it to them whether there had been any Neglect, and obſerved that the Note was payable to *Harriſon*, who had kept it eleven Days, and probably would not have demanded it ſooner than *M.* did; it appearing the Goldſmiths were in full Credit all the while. The Jury deſired they might find it ſpecially, and

and leave it to the Court whether there was a reaſonable Time; but the Chief Juſtice told them they were Judges of that; whereupon they found for Defendant, and declared it as their Opinion, That a Perſon who did not demand a Goldſmith's Note in two Days, took the Credit on himſelf.

Eaſter, the eighth of *George*, *C. B.*

Connor *againſt* Martin.

Feme Covert cannot indorſe a Promiſſory Note.

IT was held that a Feme Covert could not indorſe a promiſſory Note made to herſelf, the Law having veſted the Right in her Huſband.

Trinity, the eighth of *George*.

Anonymus.

In Middleſex, before Pratt Chief Juſtice.

Declaration of Wife, where Evidence againſt her Huſband.

THE Chief Juſtice allowed the Wife's Declaration, that ſhe agreed to give four Shillings *per* Week for nurſing a Child, was good Evidence to charge the Huſband, this being a Matter uſually tranſacted by the Women.

Mich.

Mich. the ninth of *George.*

Lock *againſt* Major.

Bankrupt's Certificate no Evidence of the Bankruptcy.

BY 5 *Geo. c.* 24. §. 30. It is provided, 'That a Bankrupt's Certificate ſhall 'be given in Evidence, and be a full Diſ- 'charge of any Action that ſhall be brought '*by any Creditor of ſuch Bankrupt.*' A Point was reſerved at *Niſi Prius* before *Pratt* Chief Juſtice, whether it was not ſtill neceſſary to prove an Act of Bankruptcy; and upon Debate in open Court they were all of Opinion it was, for the Word *ſuch* was relative, and therefore he muſt be proved to be ſuch a Perſon as is before deſcribed.

Mich. the ninth of *George.*

Thornton *againſt* Moulton.

At Guildhall, before Pratt Chief Juſtice.

What a Tender of Stock.

AT the Opening of the Books the two Brokers met, and the ſelling Broker told the other he was ready to transfer; the other alledged it was uſual to indulge the Buyer for two or three Days, and that he would find his Principal in that Time, which the other not diſagreeing to, nothing

more was done; and for want of having the Buyer called at the Books the firſt Day of the Opening, the Chief Juſtice ruled it not a good Tender; and the Plaintiff was nonſuit.

Hilary, the ninth of *George*.

James *againſt* Hatfield.

At Guildhall, before King Chief Juſtice.

What a Guardian ſaid, admitted as Evidence againſt an Infant.

AN Infant brought an Action of Aſſault, and declared by Guardian, and to prove that this Witneſs was the Promoter of the Cauſe, and at the Expence of it, the Chief Juſtice allowed the Defendant to give in Evidence what the Guardian had declared to that Purpoſe, he being a Perſon liable to Coſts.

Eaſter, the ninth of *George*.

Hayward *againſt* The Bank of England.

In what Time a Goldſmith's Bill muſt be tendered.

THE Plaintiff who kept Caſh with the Bank, on *Saturday* left a Note for fifty Pounds on *Cox* and *Cleeve*: On *Monday* they gave it to the Runner who left it at the Shop in the Morning, where they can-

cancelled the Note; but when he called in the Afternoon for the Money, according to his uſual Practice, he found the Bankers had ſtopt Payment, whereupon he took a new Note of the ſame Tenour and Date; and *King* Chief Juſtice directed the Jury that it would be dangerous to ſuffer Perſons to deal with Notes in this Manner, and ſaid the Common Pleas was of that Opinion in the like Caſe; but however he directed they ſhould only find the Value of the Note when cancelled; upon which the Jury found twenty-five Pounds, the Goldſmiths having paid ten Shillings in the Pound.

Trinity, ninth of *George.*

Dale *againſt* Johnſon.

At Niſi Prius in Middleſex, before Pratt Chief Juſtice.

THE Defendant in the Action aſſigned for Error, that the Plaintiff died before Judgment; and to prove it he called the Wife of the Plaintiff, and the Chief Juſtice allowed her to be a Witneſs.

Aſſigned for Error, that Plaintiff died before Judgment, which was proved by Plaintiff's Wife.

Mountcan

Mountcan *againſt* Willſon.

Before Eyre and Forteſcue Juſtices.

All Acts done by Commiſſioners muſt be ſigned during their Sitting.

A Certificate from the Commiſſioners, for ſtating the Debts of the Army, was offered in Evidence, but rejected, becauſe it appeared to be ſigned by one at a Time at their Houſes; the Judges being of Opinion that it could only be ſigned ſitting upon the Commiſſion, like the Biſhop of *Ferne*'s Caſe.

Mich. the tenth of *George.*

Ball *againſt* Boſtock.

At Guildhall.

Where a Perſon may be intereſted and yet ſhall be a Witneſs.

IN Trover for three *South-Sea* Bonds, the Caſe was this; *Ball* delivered to *Letchmere*, a Broker, thoſe Bonds to ſell, and they were picked out of his Pocket. Notice being given at the *Southſea* Houſe, they were ſtopt by Mr. *Henry*, one of the Clerks, upon *Boſtock*'s bringing them to receive the Intereſt. Upon this *Boſtock* brought Trover againſt *Henry*, who at the Trial offered to prove the Property to be in *Ball* and *Letchmere* for that Purpoſe, but it appearing he had given Bond to indemnify the Company

Company in ſtopping the Bonds, *King* Chief Juſtice, refuſed to let him be examined, ſaying though there are many Inſtances where a Party ſhall be a Witneſs, though he is concerned in the Event of the Cauſe, yet there never was a Caſe of allowing one who had made himſelf liable to pay Coſts in the Action; upon this the Plaintiff recovered. Then *Ball* brings Trover againſt *Boſtock*, and at this Trial Exception was taken to *Letchmere*'s Evidence, becauſe if *Ball* ſhould recover againſt *Boſtock*, that would be ſet in Equity againſt the former Recovery by *Boſtock* againſt *Henry*, and ſo diſcharge *Letchmere*'s Bond; but the Chief Juſtice ſaid that was too remote to exclude him from being a Witneſs, and went only to his Credit; whereupon he was ſworn, and proved the Property in *Ball*, and that they were ſtolen. On the other Hand the Defendant proved that he bought them, at a Tavern, of a Clergyman, and paid three hundred Pounds in Money, beſides the Intereſt: The Chief Juſtice left it to the Jury upon the Validity of the Sale, and they found for the Defendant.

Mich.

Mich. the tenth of *George.*

Richardson *against* Atkinson.

At Nisi Prius in Middlesex, before Eyre and Forteſcue, in the Abſence of the Chief Juſtice.

Taking Part and ſpoiling the reſt is a Converſion of the whole.

THEY held that the drawing out Part of a Veſſel and filling it up with Water was a Converſion of all the Liquor, and the Jury gave Damages as to the whole.

Hilary, the tenth of *George.*

Bullock *againſt* Noke.

At Guildhall, before Pratt Chief Juſtice.

Tender of Stock muſt be on the very Day.

IN a Stock Cauſe the Plaintiff proved a Tender on the ſecond Day of the Opening, and would have examined into the Cuſtom of the Alley, which was to allow either Party a Day or two to tender or accept; but the Chief Juſtice refuſed to hear that Evidence, ſaying, their Uſage could never alter the Law; and ſo the Plaintiff was called.

N. B. In *C. B. King* Chief Juſtice left it to the Jury upon ſuch an Evidence, and they found it a good Tender.

Eaſter,

Easter, the tenth of *George*.

Dauling *against* Brooke.

At Guildhall, before King Chief Justice.

DEBT on a joint Bond against two Defendants setting out *Quod ipse* (one of them) *simul cum A. B. qui per Proces' e Cur' dic. Dom. Reg' de Banco in Placito sup' brev' præd' habit' utlegat' exist' concessit se teneri, &c.* The Defendant pleaded *Non est Factum* of himself and *A. B.* and on Trial the Bond appeared to have been regularly executed by the now Defendant, and attested (as to his Execution) by two Witnesses. But as to *A. B.* there were no Witnesses, only his Hand and Seal appeared; and one of the Witnesses to the Execution by the Defendant, did depose that he believed *A. B.* did afterwards come in and execute it, but he would not be positive, not having ever seen him before or since. Upon this Evidence, and a Letter from *A. B.* to the Plaintiff inquiring whether the Defendant had paid the Money upon the Bond, the Chief Justice left it to the Jury, who found it *Factum* of both.

Evidence on *Non est Factum.*

Eaſter, the tenth of *George*.

Stevenſon *againſt* Nevinſon.

On a Trial at Bar in B. R.

Where there are two Qualifications to an Election of an Officer, he who has but one only muſt be a Witneſs as to the Right.

THE Queſtion was, Whether the Plaintiff was qualified to be elected Common Councilman of *Appleby*. The Defendant attempted to diſqualify him by ſetting up two Qualifications which he had not, *viz.* a Burgage Tenure, and being an Inhabitant, and to prove this called one who was an Inhabitant, but had not a Burgage Tenure. It was objected, that he was no Witneſs to narrow the Right and confine it to Burgage Tenants and Inhabitants, having one of the Qualifications himſelf, and therefore ſo far intereſted as he was nearer the Right he ſet up than other Perſons; but the Court ſaid there was a Neceſſity of allowing ſuch People in a Queſtion of this Nature, ſince they muſt beſt know the Right; beſides he was in Effect a Witneſs againſt himſelf, by ſaying, though I am an Inhabitant, yet I have no Right to be choſen, becauſe I have not a Burgage Tenure.

Trinity,

Trinity, the tenth of *George*.

Oates *againſt* Machen.

At Niſi prius in Middleſex, before Forteſcue and Raymond Juſtices.

IN an Action of Eſcape againſt the Marſhal it was alledged, that the Priſoner was ſurrendered to him at the Chief Juſtice's Chamber in the Pariſh of St. *Brides*; whereas it appeared upon the Evidence that it was in the Pariſh of St. *Dunſtan*. But the Judges held it well enough, this being Debt, and the Surrender the only thing material, and that it differed from the Caſe of Treſpaſs, where every Part of the Declaration is deſcriptive.

Where in a Declaration the Deſcription of a Place is material.

N. B. The Defendant was in Execution for the Coſts in Ejectment, and it was held good Notice within the Statute *W.* 3. if ſigned by the Leſſor of the Plaintiff.

The ſame Term.

Boddy *againſt* Smith.

At Guildhall, before King Chief Juſtice.

EJECTMENT for an Houſe in the Pariſh of *St. Peter* in the Ward of *Cheap*; the Defendant proved it was in the Ward of *Farringdon without*, and that no Part of the Pariſh of *St. Peter* was in the

Where in a Declaration the Deſcription is material.

Ward of *Cheap*; and the Plaintiff was nonſuit.

The ſame Term.

The King *againſt* Moiſe.

Before Forteſcue and Raymond Juſtices.

Proprietor of Note a Witneſs on Indictment for tearing.

INdictment againſt the Defendant for tearing a Note, whereby he promiſed to pay to *A. B.* ſo much Money; *A. B.* was produced as a Witneſs; and it was objected that it was Swearing to ſet up his own Demand; becauſe if Defendant was convicted, the Court would oblige him to give a new Note; but the Judges allowed him.

Eaſter 10 *Ann.* Queen *againſt* Brent. In Information for extorting a Bond, the Obligor allowed.

The ſame Term.

Duel *againſt* Harding.

In Middleſex, before Forteſcue and Raymond Juſtices.

Servant Witneſs in an Action by Maſter for beating him.

IN an Action for beating his Servant, whereby he loſt his Service, they allowed the Servant to be a Witneſs.

The

The ſame Term.

Underwood *againſt* Hewſon.

THE Defendant was uncocking a Gun, and the Plaintiff ſtanding to ſee it; it went off and wounded him; and at the Trial it was held, that the Plaintiff might maintain Treſpaſs.

Treſpaſs lies for an Accidental Hurt.

Eaſter, tenth of *George*, *B. R.*

Sir Chriſtopher Muſgrave *againſt* Nevinſon.

ON a Trial at Bar a Corporator of *Appleby* was put to prove his receiving the Sacrament within a Year before his Election, it being recent; and therefore the Court required it, though no Notice was given him for that Purpoſe.

A Corporator on a Recent Proſecution muſt prove his Qualification.

Mich. the eleventh of *George.*

Eaſt India Company *againſt* Glover.

At Guildhall, before Pratt Chief Juſtice.

THE Plaintiffs declared upon a Sale of Coffee at ſo much *per* hundred, which the Defendant was to take away by ſuch

Suffering Judgment to go by Default is an Admiſſion of the Contract declared on.

ſuch a Time, or anſwer in Damages. There was a Judgment by Default; and on executing Writs of Inquiry before Chief Juſtice *Pratt* at *Guildhall*, he refuſed to let the Defendant in to give Evidence of Fraud on the Side of the Plaintiffs at the Sale, becauſe he ſaid the Defendant had admitted the Contract to be as the Plaintiffs had declared, by ſuffering Judgment by Default, inſtead of pleading *Non aſſ.* and now they were only upon the *Quantum* of Damages.

Eaſter, the eleventh of *George*.

The King *againſt* the Biſhop of Cheſter.

A Deed is good though executed before ſtampt.

UPON a Writ of Error out of the County Palatine of *Lancaſter*, it appeared upon a Bill of Exceptions that a Deed produced in Evidence was not ſtampt at the Time of executing it; and the whole Court were of Opinion it was proper Evidence, being ſtampt at the Time it was produced; for they ſaid the Act never intended to avoid Deeds that were not ſtamped, but only to add a Penalty to enforce the Duty, and here the Penalty had been paid. Judgment affirmed.

Trinity,

Trinity, the eleventh of *George*.

Chark *againſt* Godfrey, *C. B.*

IT was ſettled by the Court on great Conſultation, and delivered in a ſolemn Reſolution by *Eyre* Chief Juſtice, That an Attorney's Bill muſt be delivered on the 3d of *Jac.* 1. *c.* 7. before any Action brought, that ſo the Client may have an Opportunity of looking into it before he is run to any further Expence.

Practice in delivering Attorney's Bills.

The ſame Term.

Shank, *qui tam*, *againſt* Payne.

In Middleſex, before Raymond Chief Juſtice, B. R.

IN a *Qui tam* on the Statute of Uſury, the Chief Juſtice refuſed to let the Party to the Contract be a Witneſs to prove the Repayment of the Money, becauſe till that was proved he was no Witneſs at all.

Party to uſurious Contract cannot be called to prove Payment.

The King *againſt* Azire.

ON Indictment againſt the Huſband for an Aſſault upon the Wife, the Chief Juſtice allowed her to be a good Witneſs

Wife Witneſs againſt Huſband.

for the King, and cited Lord *Audley*'s Case Vol. I. *State Trials.*

The King *against* Fletcher.

Where one Defendant is fined, he is a Witness for the other.

TWO were indicted for an Assault, one submitted, and was fined one Shilling, and paid it; the other pleaded Not guilty; and upon the Trial the Chief Justice allowed him to call the other Defendant, the Matter being now at an End as to him.

Mich. the twelfth of *George.*

Hall *against* Cove.

Trial by twelve Talesmen.

IT was agreed to be Common Practice in the Circuits, that if but one Juror appears, and he is challenged, there may be twelve Talesmen sworn, and try the Cause.

Shelling *against* Farmer.

At Guildhall, before Eyre Chief Justice, C. B.

Seizing an House in the *East Indies* is not triable here.

IN an Action of Trespass and Imprisonment for Facts done in the *East Indies*, the Plaintiff laid them all (being transitory) in *London*, and declared for seizing the Plaintiff's House situate at *London* aforesaid, in the Parish and Ward aforesaid. It was objected

objected for Defendant, that the Treſpaſs as to the Houſe, was local, and they could not give Evidence of ſeizing a Houſe in the *Eaſt Indies*; and *Eyre* Chief Juſtice refuſed to let the Plaintiff give Evidence as to the Houſe, comparing it to the Caſe of Rent for an Houſe at *Barbadoes*, where it has been held, you may bring Covenant for the Rent in *England*, but an Action of Debt, which is local, cannot be brought here.

In the Courſe of the Evidence it appeared the Action was brought againſt the Defendant for an Impriſonment by him as Governor of a Factory in the *Eaſt Indies*; and for his Defence he alledged that he had Orders from the Company ſo to do, and appealed to the Company's Books of Letters, *&c.* which he deſired might be produced.

Eaſt India Company not obliged to produce Books of Letters, *&c.*

Counſel attended on behalf of the Company, to deſire to be excuſed, alledging that theſe were not of the nature of publick Books, which every Body has a Right to have acceſs to, and of which Copies are Evidence; whereas thoſe related only to the private Tranſactions of the Company, and it might be of miſchievous Conſequence, if in every Action wherein the Company is not concerned, they ſhould be obliged to lay open the Secrets of their Trade, and diſcloſe to all the World a whole Series of Letters and Correſpondence between them and

and their Agents: However they ſaid they had the Books and Papers there, and ſubmitted to the Directions of the Court.

The Chief Juſtice ſaid he would not oblige the Company to produce them, and ſo left the Company at their Liberty, who, thereupon refuſed to produce them, and they were carried back again to the *Eaſt India* Houſe.

The Action was againſt the Defendant as Deputy Governor, and on Not guilty he gave in Evidence a Releaſe given by the Plaintiff to the *Eaſt India* Company in Purſuance of an Award, whereby reciting he had ſuſtained ſeveral Injuries by the Company's Agents, particularly the Deputy Governor; therefore they awarded him one thouſand Pounds, and order him to give a general Releaſe: The Defendant being no Party to that Releaſe could not plead it; but the Chief Juſtice allowed him to give it in Evidence, in mitigation of Damages, and theſe not being private Papers it was conſented, on behalf of the Company, that they ſhould be produced.

Where an Award is made to take in all Matters, ſhall not be admitted to ſhew any thing was not taken into Conſideration.

The Plaintiff in Reply would have called the Arbitrators to prove that they refuſed to take into Conſideration the Occaſion of this Action, which was for the private perſonal Wrong. But the Award and Releaſe having

having general Words sufficient to take in all, the Chief Justice would not suffer any Evidence to be given to contradict the Award; so the Jury found for the Plaintiff (as they could not help doing, the Defendant having pleaded Not guilty) and gave him a Shilling Damages.

Morris *against* Martin.

At Guildhall, before Raymond Chief Justice.

ACTION for Meat, *&c.* provided for Defendant's Wife. The Defendant proved she went away from him with an Adulterer; and the Chief Justice held that the Husband should not be charged for Necessaries for her, though the Plaintiff who provided for her had no Notice. And he said Chief Justice *Holt* always ruled it so; and he put the Case of an Apothecary who took a sick Woman into his House, being the Wife of a Country Gentleman, from whom she had gone with an Adulterer, (*Todd* against *Stoakes*, *Mich.* 8 *W.* 3. at *Guildhall*) so the Plaintiff was nonsuited.

Where Wife goes away with an Adulterer, the Husband cannot be charged for Necessaries.

Martin and others *against* Horrell.

THE Plaintiffs were Goldsmiths, and one *Stone*, their Apprentice overpaid a Bill

Goldsmith's Servant who overpays Money is a Witness in Action for it again.

a Bill ten Pounds; and in an Action for Money had and received to the Plaintiffs Uſe the Chief Juſtice allowed *Stone* to be a Witneſs; though it was objected that unleſs the Money was recovered back from the Defendant, *Stone* would be anſwerable to the Plaintiffs. But the Chief Juſtice ſaid he did it *ex neceſſitate* of the thing, and it would be of miſchievous Conſequence, if in Tranſactions of this Nature a Goldſmith's Servant ſhould not be a Witneſs; ſo the Plaintiffs recovered the ten Pounds.

Weaver *againſt* Boroughs.

Where there is a ſpecial Agreement, the Plaintiff cannot go upon a general *Indeb' Aſſ.*

THE Plaintiff declared on a ſpecial Agreement for the Hire of a Horſe at two Shillings and Sixpence a Day, and to keep him ſo many Days, and return him ſafe at the End of the Time. There was likewiſe an *Indeb' Aſſ.* for the Hire, and on the Trial the Plaintiff could not prove the ſpecial Agreement in the Manner he had laid it, and therefore his Counſel would have had Recourſe to the *Indeb' Aſſ.* to recover only the Hire. But the Chief Juſtice was of Opinion, that the Agreement for two Shillings and Sixpence a Day being laid as Part of the ſpecial Agreement, which was not proved, he could not let them ſeparate that Clauſe, and recover for the Hire, as they might

might have done on a general *Indeb' Aſſ.* it not being a Debt, unleſs the Agreement had been proved; and he put the Caſe of a Contract for Goods at a certain Price, where the Plaintiff is never ſuffered to recover upon the *Quantum Meruit*; ſo the Plaintiff was called.

Wilkinſon *againſt* Lutwidge.

CASE upon a Bill of Exchange againſt the Acceptor; and it was objected, that the Plaintiff ſhould not be admitted to prove the Acceptance until he had proved the Hand of the Drawer; and a Difference was taken between this Caſe and the Caſe of an Action againſt the Indorſor who is liable, though the Bill be not ſigned by the Perſon who is ſuppoſed to draw it, becauſe an Indorſor is in the Nature of a new Drawer; whereas an Acceptor is not liable unleſs the Bill was fairly ſigned by the Drawer. But as to this the Chief Juſtice was of Opinion, that the Proof of an Acceptance was a ſufficient Acknowledgment on the Part of the Acceptor, who muſt be ſuppoſed to know the Hand of his own Correſpondent; but he ſaid it would not be concluſive Evidence, and therefore if the Defendant could ſhew the contrary, the Reading

In an Action againſt Acceptor of Bill need not prove the Hand of the Drawer.

Reading the Bill on behalf of the Plaintiff ſhould not preclude him.

Whereupon the Bill was read, and the Queſtion came upon the Validity of the Acceptance, as to which the Caſe was this:

What amounts to an Acceptance of a Bill of Exchange.

The Bill was drawn from *New England* for a Sum of Money advanced there to fit out a Ship that had put in there, after having been taken by Pirates: The Bill was drawn upon the Defendant who was the Freightor, and he living at *Whitehaven*, the Plaintiff applied to a Merchant in *London*, who was his Correſpondent, to get him to ſend this Bill and another of one hundred and fifty Pounds, drawn by the ſame Perſon and on the ſame Account. He ſent both Bills incloſed to the Defendant, who by Letter acknowledged the Receipt of it, and writes thus; 'The two Bills of Exchange 'which you ſent me, I will pay them in 'caſe the Owners of the *Queen Anne* do 'not, and they living in *Dublin* muſt firſt 'apply to them; I hope to have their An'ſwer in a Week or ten Days; I do not 'expect they will pay them, but I judge 'it proper to take their Anſwer before I 'do, which I requeſt you will acquaint 'Mr. *Wilkinſon* with, and that he may 'reſt ſatisfied of the Payment.'

In another Letter he writes, 'I have not 'had an Opportunity of ſending the Bills

'you

'you sent me, to the Owners of the *Queen* 'Anne to *Ireland*, but will take the first 'Opportunity, and then shall remit to the 'Gentleman concerned according to my 'Promise.'

The Defendant upon this paid the hundred and fifty Pounds Bill, but in this Action insisted that it did not amount to an Acceptance, being only conditional to pay it in case the Owners of the *Queen Anne* did not, and his Promise to procure it from them was in Favour of the Plaintiff. But the Chief Justice was of Opinion, that it was rather in Favour of himself, and he having undertaken to write to them, it was not incumbent on the Plaintiff to shew any Application to them; and as to the Acceptance it was in his Opinion, a very strong one; the Bill was presented to the Defendant, says he this is a good Bill, and I will pay it: You need not protest it, for it shall be paid; I only desire that for my Convenience you would stay till I can write to the Owners in *Ireland*, who I do not expect will do any thing in it: This will be of Service to me, and as to you, you shall be secured, for I promise you shall have the Money at all Events.

The Bill being payable thirty Days after Sight, the Jury gave Interest from thirty Days after the Date of the first Letter, which

Interest given from the Time of Acceptance.

which acknowledged the Receipt of the Bill.

Syderbottom *against* Smith.

In Middlesex, before Eyre Chief Justice, C. B.

In Action against Indorsor must prove Demand on Drawer.

IN an Action against the Indorsor of a promissory Note, the Chief Justice directed the Jury to find for the Defendant, because the Plaintiff had not proved Diligence to get the Money of the Drawer, being of the old Opinion, that the Indorsor only warrants upon the Default of the Drawer. Q.

Vide Salk. Tit. Bill, &c.

Norcott *against* Orcott.

A Creditor allowed to prove Debtor not intitled to his Discharge on the Mint Act.

THE Defendant pleaded the Mint Act, and the Issue to be tried was, whether he was a Shelterer within the *Mint* on the 11th of *February* 1722. To prove him at Large at that Time, the Plaintiff called several of the Creditors; and it was objected that they were not good Witnesses to prove it, being interested in the Event of the Question; and the Case of *Shuttleworth* and *Bravo* was cited, where on an Issue out of Chancery, to try whether a Bankrupt had forfeited the Allowance out of his Estate by Gaming, contrary to the Act, it was

refuſed to let any of the Creditors be ſworn to prove a Gaming, becauſe that was ſwearing to increaſe their own Dividend.

The Chief Juſtice allowed that Caſe, but ſaid that affected all the Creditors, whereas here the Plaintiff only was at preſent concerned: He ſaid it would go to their Credit, but not to their Competency; ſo they were ſworn.

Powel *againſt* Hord, Sheriff of Oxfordſhire.

In Middleſex, before Raymond Chief Juſtice.

ACTION for falſe Return of *Non eſt invent.* on Meſne Proceſs, and the Chief Juſtice refuſed to let the Defendant prove by the Bailiff who had the Warrant, that he had endeavoured to execute it, becauſe he had given Security, ſo that it was his own Cauſe in Effect.

Sheriff's Bailiff no Witneſs to prove an Attempt to arreſt.

The Sheriff being not able to excuſe the Return, it was attempted to mitigate the Damages by ſhewing that the Defendant was ſtill viſible, and it being only Meſne Proceſs the Debt was not loſt, and the Meaſure of Damages ſhould be only the Expence of the Proceſs. The Chief Juſtice in his Direction inclined to give the Plaintiff the whole Debt of forty three Pounds

In Action for falſe Return on Meſne Proceſs the Jury may give the whole Debt in Damages.

(it being an Action of Debt on a Judgment) becauſe there was but a Poſſibility of the Plaintiff's recovering againſt the original Defendant. He ſaid it would depend on Circumſtances, and if the Defendant had been a Man of Eſtate, and ſo no Danger, he ſhould think the Debt would be too much to give; but that not being this Caſe, the Jury found the whole Debt in Damages with the Opinion of the Chief Juſtice; and afterwards the Plaintiff moved for a new Trial; and upon the Chief Juſtice's ſtating the Caſe as it appeared upon the Evidence, the whole Court were of Opinion the Chief Juſtice had done right in refuſing the Bailiff to be a Witneſs, and that as to the point of Damages the Verdict was right, and there ought to be no new Trial.

Stone *againſt* Lingwood.

At Guildhall, before Eyre Chief Juſtice.

In Trover the Defendant cannot juſtify detaining Goods till Money laid out upon them is paid.

THE Plaintiff was Captain of a Ship, and the Defendant Owner. The Plaintiff brought over a ſmall Parcel of Elephant's Teeth on his own Account, and a large Parcel for the Defendant, who entered the whole at the Cuſtom-Houſe, paid the Duty, and had the whole delivered out to him; and not redelivering to the Captain his

his Parcel, an Action of Trover was brought; and it was inſiſted for Defendant, that the Plaintiff ſhould ſhew a Tender of the Duty, otherwiſe the Goods were in the Nature of a Pledge, and he was not bound to deliver them. But the Chief Juſtice ſaid that would not juſtify the Defendant in keeping them, for he had his Action for the Money, and if he would ſhew what the Duty came to, it ſhould be deducted in Damages.

Ryley *againſt* Hicks.

In Middleſex, before Raymond Chief Juſtice, B. R.

THE Plaintiff declares, that the 24th of *February* 1723 ſhe demiſed to the Defendant a Chamber, a Cellar, and Half a Shop, to hold from *Lady-day* then next, for a Quarter of a Year, and ſo from Quarter to Quarter ſo long as both Parties ſhall pleaſe, at five Pounds a Quarter.

Leaſes by Parol for three Years to commence at a future Day are good.

It was objected by *Whitaker*, that this being to commence at a future Day was but a Leaſe at Will ſince the Statute of Frauds: The Chief Juſtice at firſt thought it a good Objection, but upon further Conſideration he was of Opinion, that the Exception was not confined to Leaſes that were to com-

mence from the Time of making, but was general as to all Leaſes that were not to hold for above three Years from the making; ſo the Plaintiff had a Verdict.

Titus *againſt* Lady Preſton.

At Guildhall, before Gilbert Chief Baron.

Change Alley Computation is to be taken by Calendar Months.

DEBT on Bond; Defendant pleaded that the Money was lent from the 24th of *Auguſt* to the 24th of *May*, for a Premium of one hundred and fifty Guineas, and on Evidence it appeared the Bargain was for nine Months: It was objected for Plaintiff to be a Variance, becauſe Months muſt be taken to be Lunar, and not Calendar, and then it does not come ſo far as the 24th of *May*. But the Chief Baron thought it well enough, the general Underſtanding being of Calendar Months in Caſes of this Nature; ſo Defendant had a Verdict.

Moreland *againſt* Bennet.

In Middleſex, before Raymond Chief Juſtice.

If any Intereſt was paid upon an old Bond after the Day, it muſt be a Plea upon the Statute.

TO a Bond of thirty Years ſtanding the Defendant pleaded *Solvit ad Diem*, and relied upon the Preſumption. The Plaintiff

Plaintiff in Anſwer could only prove Payment of Intereſt two Years after the Time mentioned in the Condition, but gave no Evidence of any Receipt or Demand for twenty-eight Years paſt. The Chief Juſtice was of Opinion that this Plea of Payment at the Day was to be taken as ſtrictly in this Caſe, which went only upon the Preſumption, as in any other Caſe; and the Plaintiff having falſified the Plea by ſhewing a Payment of Intereſt two Years after, it was not enough to ſay the other twenty-eight Years were enough to let in the Preſumption, becauſe to take Advantage of that the Defendant ſhould have pleaded upon the Act, for Amendment of the Law, that he paid the Money after the Day, in which Caſe it would have been with him upon this Evidence.

The King *againſt* Fox.

Laying a Wager does not incapacitate for a Witneſs. 3 Lev. 152. 2 Mod. Caſes 31.

ON an Indictment for an Aſſault it was proved that the Proſecutor had laid a Wager that he ſhould convict the Defendant; and the Chief Juſtice held him to be a good Witneſs for the King, though it might go to his Credit.

Fowler *againſt* Sir Thomas Samwell.

At Guildhall, before Raymond Chief Juſtice.

Where a Debt is to ariſe upon a Condition ſubſequent, there muſt be an exact Performance to intitle the Plaintiff to recover on a general *Indeb' Aſſ.*

FOWLER, being the ſurviving Partner of *Nicholls*, brought an Action upon the following Note, and likewiſe declared on an *Indebit' Aſſumpſit.* 'Received and 'borrowed of *Richard Nicholls* and Co. 'four thouſand five hundred Pounds, which 'I promiſe to repay with Intereſt on *his* 'transferring to me, or Order, five hundred 'and fifty Pounds *South Sea* Stock.' The Tender of Stock was proved to be after the Death of *Nicholls*, and the Chief Juſtice was of Opinion, that it being tied up to a Tender by *Nicholls* (who had Time during Life, if not haſtened by Requeſt) no Tender after his Death could make this an abſolute Debt, recoverable upon an *Indebit' Aſſumpſit.* But the Plaintiff muſt go upon the ſpecial Count.

Grammer and others *againſt* Nixon.

At Guildhall, before Eyre Chief Juſtice.

Maſter liable for Fraud of Apprentice.

A Goldſmith's Apprentice ſold an Ingot of Gold and Silver, upon a ſpecial Warranty that it was of the ſame Value

per

per Ounce with an Eſſay then ſhewn. Upon the Evidence it appeared he had forged the Eſſay, and that the Ingot was made out of a Lodger's Plate which he had ſtolen. And the Chief Juſtice held the Maſter was anſwerable in this Caſe.

Eaſter, the ninth of *George*, Ro. 21.

Jones *againſt* Pearle.

IN Trover for three Horſes the Defendant pleaded that he kept a publick Inn at *Glaſonbury*, and that the Plaintiff was a Carrier, and uſed to ſet up his Horſes there, and thirty-ſix Pounds being due to him for the Keeping the Horſes, which was more than they were worth, he detained and ſold them, as it was lawful for him to do. And on Demurrer, Judgment was given for the Plaintiff, an Innkeeper having no Power to ſell Horſes except within the City of *London*, 2 *Roll. Abr.* 85. 1 *Vent.* 71. *Mo.* 876. and beſides, when the Horſes had been once out, the Power of detaining them for what was due before did not ſubſiſt at their coming in again.

Innkeeper cannot ſell the Gueſt's Horſe for keeping.

Mich. ninth of *George*, Ro. 363.

Acheſon *againſt* Fountain.

The Order of an Indorſee may ſue on a general Indorſement to him only.

UPON a Caſe made at *Niſi Prius* before *Pratt* Chief Juſtice, it appeared that the Plaintiff had declared on an Indorſement made by *William Abercrombie*, whereby he appointed the Payment to be to *Lewiſa Acheſon, or Order*; and upon producing the Bill in Evidence it appeared to be payable to *Abercrombie*, or Order, but the Indorſement was only in theſe Words, 'Pray 'pay the Contents to *Lewiſa Acheſon*,' and therefore it was objected, that the Indorſement not being to Order, did not agree with the Plaintiff's Declaration.

But upon Conſideration the whole Court were of Opinion it was well enough, that being the legal Import of the Indorſement, and that the Plaintiff might upon this have indorſed it over to another, who would be the proper Order of the firſt Indorſor. Judgment for the Plaintiff.

Mich. the twelfth of *George.*

Burnaby's Caſe, In Chancery.

Being in Execution is a Satisfaction of the Debt.

THE Body of the Defendant was in Execution, and afterwards a Commiſſion

miſſion of Bankrupt iſſues againſt him on the Petition of the Plaintiff in the Action; and Lord Chancellor *King* ſuperſeded it, becauſe his Debt was ſatisfied in Conſideration of Law, and he could not be a petitioning Creditor.

Mich. the twelfth of *George.*

The Duke of Somerſet *againſt* France and others.

The Cuſtoms, but not the Lords of other Manors, allowed to be given in Evidence.

ON a Trial at Bar on a feigned Iſſue touching the Duke's Right to a Fine, as next admitting Lord upon the Death of the Dutcheſs, the Court refuſed to let the Lords of other Manors be Witneſſes for the Duke: But they ſuffered the Payment by ſome other Tenants of the ſame Manor to be given in Evidence, as alſo the Cuſtoms of other Manors.

Browning *againſt* Newman.

Caſe *for Words*, by which he loſt the Cuſtom of J. S. and ſeveral others; the Plaintiff ſhall only be admitted to prove the Loſs of J. S.'s Cuſtom particularly.

At Guildhall, before Raymond Chief Juſtice.

THIS was an Action upon the Caſe, for theſe Words, 'You are a Thief 'and I will prove you ſo,' The Plaintiff declared that by Reaſon of the Defendant's ſpeaking them, one *John Merry* and divers others

others, who were his Cuſtomers, left off dealing with him in Trade.

Upon the Trial the Plaintiff proved the ſpeaking the Words, and the ſpecial Damage as to *Merry*, and would have gone on to prove by ſeveral others, that they had likewiſe left off dealing with him by reaſon of the Defendant's ſpeaking theſe Words.

But the Defendant oppoſed this; becauſe (as he inſiſted) he could not be ſuppoſed to be prepared to anſwer ſuch uncertain kind of Evidence.

The Chief Juſtice ſaid, That in Actions for Words, which are not in themſelves actionable, and where the ſpecial Damage is the *Giſt* of the Action, this ſort of Evidence is allowed, though the particular Inſtances of ſuch Damages are not ſpecified in the Declaration: But in Actions for Words, which are in themſelves actionable (as the preſent Words are) particular Inſtances of ſpecial Damage ſhall not be given in Evidence, unleſs particularized in the Declaration; and therefore he thought the Plaintiff could not be allowed to give particular Inſtances of the Loſs of any other Cuſtomer, except *Merry*. He ſaid that he had known it ruled otherwiſe; but this was his Opinion: However he admitted the Plaintiff to give general Evidence of the Loſs of Cuſtomers.

But he may give Evidence of the Loſs of other Cuſtomers.

Carter

Carter *againſt* Shepheard.

TROVER for a Goldſmith's Note for one hundred Pounds; the Fact was, *C.* had a Note of *Shepheard*'s; while *Shepheard* was paying him the Money, *C.* put fifty Pounds into his Bag of the Money after it was told and laid on the Counter, while the reſt was telling, during which Time the fifty Pounds in the Bag was ſtolen; and the Queſtion was whether *Carter* by putting the Money in the Bag had ſo appropriated it to himſelf that he ſhould ſtand to the Loſs thereof; and the Court held that he ſhould, for the Poſſeſſion of it was the ſame as if he had put it in his Pocket, and he might have Detinue for it after it was in his Bag; accordingly the Court ordered, that whereas he had a Verdict for one hundred Pounds he ſhould have a Judgment for one hundred Pounds, and make a Releaſe for fifty Pounds on Record.

Putting Money into a Bag, is an Alteration of the Poſſeſſion.

Car *againſt* King.

DEBT againſt the Huſband for lodging of his Wife; and the Proof was only that he formerly cohabited with her, and owned her as his Wife; and held ſufficient to charge him, but that he might diſ-

Cohabitation is enough to charge the Huſband, who may diſcharge himſelf by Elopement.

diſcharge himſelf by giving Elopement in Evidence, for they that will truſt a Wife that has eloped, do it at their Peril.

Dillon *againſt* Crawley.

Pas 13 W: 3 B: R:

Proof of an Indorſement under the Hand of the Obligor is good Proof of the Bond.

ERROR of a Judgment upon a Demurrer to Evidence in the Common Pleas; a Witneſs to the Sealing and Delivery of a Deed being ſubpœned did not appear, but to prove it the Party's Deed, they proved an Indorſement made by him thereupon three Years, after reciting a Proviſo within, that if he paid ſuch a Sum the Deed ſhould be void, and acknowledging the ſaid Sum was not paid, and a Fine was levied of the very Lands mentioned in the Deed to *Crawley*, and by the Indorſement he expreſsly owned it to be his Deed; and upon this the Deed was read; and now it was objected, that this was not good Evidence, becauſe not the beſt the nature of the Thing would bear, but only circumſtantial, which ought never to be admitted where better may be had from the nature of the Thing; becauſe Circumſtances are fallible and doubtful; and it is upon this Reaſon that a Copy of a Record is good, becauſe one cannot have the Record itſelf, but a Copy of a Copy will not do. Upon *Non eſt factum* to a Bond, one of the Witneſſes

neſſes being ſubpœned did not appear, and it was offered to prove that he owned it his Bond, but it was denied to be allowed.

Holt: Can there be better Evidence of a Deed than to own it, and recite it under his Hand and Seal? Judgment affirmed by the whole Court.

Eaſter Term 1709.

Lord Angleſea *againſt* Lord Altham.

Depoſition of one in *Ireland* read.

ON a Trial at Bar, in the King's Bench, on an Iſſue out of Chancery, Lord Chief Juſtice *Holt* allowed the Depoſition of one in *Ireland* to be read, becauſe he was not within the Reach of any Proceſs of the Court. *Cro. Jac.* 542.

Mich. the twelfth of *George.*

Jeffries *againſt* Auſtin.

In Middleſex, before Eyre Chief Juſtice.

Conſideration of promiſſory Notes inquired into.

IN an Action upon the Caſe, upon a promiſſory Note brought by the Perſon to whom it was payable, the Chief Juſtice let the Defendant in to ſhew that it was delivered in the nature of an Eſcrow, *viz.* as a Reward in Caſe he procured the Defendant to be reſtored to an Office, which it being

being proved he did not effect, there was a Verdict for the Defendant.

Hilary, the twelfth of *George.*

Southerton *againſt* Whitlock.

At Guildhall, before Raymond Chief Juſtice.

Infant bound by Promiſe of Payment at full Age.

IT was held, that if Goods which are not Neceſſaries are delivered to an Infant, who after full Age ratifies the Contract by a Promiſe to pay, he is bound: And he left it to the Jury whether there was any Confirmation of the Contract at full Age.

Hilary, the twelfth of *George.*

Eaſt India Company *againſt* Pullen.

At Guildhall, before Raymond Chief Juſtice.

If I ſend my Servant with the Goods, the Carrier is not liable.

ACTION againſt the Defendant as a Common Carrier, on an Undertaking to carry for Hire on the River *Thames*, from the Ship to the Company's Warehouſes. Upon the Evidence it appeared the Defendant was a Common Lighterman, and that it was the Uſage of the Company, on the unſhipping of their Goods, to clap an Officer, who is called a Guardian, in the Lighter,

Lighter, who, as ſoon as the Lading is taken in, puts the Company's Lock on the Hatches, and goes with the Goods to ſee them ſafe delivered at the Warehouſe. It appeared to be done ſo in this Caſe, and Part of the Goods were loſt.

The Chief Juſtice was of Opinion this differred from the common Caſe, this not being any Truſt in the Defendant, and the Goods were not to be conſidered as ever having been in his Poſſeſſion, but in the Poſſeſſion of the Company's Servant, who had hired the Lighter to uſe himſelf; he thought therefore the Action was not maintainable, ſo the Plaintiffs were nonſuited.

Hilary, twelfth of *George*.

Geary *againſt* Harding.

In Middleſex, before Raymond Chief Juſtice.

In Slander, Evidence of the Truth of the Words may be given in Mitigation of Damages.

IN an Action for ſcandalous Words, the Defendant was admitted, upon Not guilty, to give Evidence of the Truth of the Words in Mitigation of Damages.

Hilary,

Hilary, the twelfth of *George*.

Chambers *againſt* Robinſon.

In an Action for a malicious Proſecution an Advertiſement of the Indictment read.

IN an Action for a malicious Proſecution of an Indictment for Perjury, the Chief Juſtice allowed the Plaintiff to give in Evidence an Advertiſement, put into the Papers by the Defendant, of the finding the Indictment with other ſcandalous Matter, though an Information had been granted for it as a Libel; not (as he ſaid) that the Jury were to conſider it in Damages, but only as a Circumſtance of Malice.

The King *againſt* Travers.

At Kingſton Aſſizes, Lent, 1726, *before Raymond Chief Juſtice.*

What Age the Law will allow an Infant to be a Witneſs at.

THE Defendant was indicted the laſt Summer Aſſizes for a Rape upon the Body of a Child then little more than ſix Years old, and becauſe the Lord Chief Baron *Gilbert* refuſed to admit the Child as an Evidence againſt him, he was acquitted: But at the ſame Aſſizes an Indictment was found againſt him for an Aſſault, with an Intent to raviſh the ſaid Child; and this Indictment coming now to be tried before *Raymond* Chief Juſtice, the ſame Objection

was

was made by *Comyns* and *Darnal*, Serjeants, *viz.* That the Girl being now but ſeven Years of Age could not be a Witneſs: They inſiſted that it had formerly been held, that none under twelve Years of Age could be admitted to be a Witneſs, and ſaid that a Child of ſix or ſeven Years of Age, in point of Reaſon and Underſtanding ought to be conſidered as a Lunatick or Madman.

On the other Side it was ſaid, that in Capital Caſes which concerned Life, this Objection might be allowed, but in Caſes of Miſdemeanor only, as this was, ſuch a Witneſs might be admitted: They inſiſted that the Objection went only to the Credit of the Witneſs; and *Hale*'s *P. C.* ſays, that the Examination of one of the Age of nine Years has been admitted: And a Caſe at the *Old Baily* 1698 was cited, where, upon ſuch an Indictment as this, *Ward*, Chief Baron, admitted one to be a Witneſs, who was under the Age of ten Years, after the Child had been examined about the Nature of an Oath, and had given a reaſonable Account of it.

But *Raymond* Chief Juſtice held, that there was no Difference betwixt Offences Capital and leſſer Offences, in this Reſpect; and that a Perſon who could not be a Witneſs in the one Caſe, could not in the other. The Reaſon why the Law prohibits the

Evidence of a Child ſo young, is becauſe the Child cannot be preſumed to diſtinguiſh betwixt Right and Wrong. No Perſon has ever been admitted as a Witneſs under the Age of nine Years, and very ſeldom under ten. In the *Old Bailey* in 1704, this Point was thoroughly debated in the Caſe of one *Steward*, who was indicted upon two Indictments for Rapes upon two Children. The firſt was a Child of ten Years and ten Months, and yet that Child was not admitted as a Witneſs, before other Evidence was given of ſtrong Circumſtances as to the Guilt of the Defendant, and before the Child had given a good Account of the Nature of an Oath: The ſecond Indictment againſt *Steward* was attempted to be maintained by the Evidence of a Child of between ſix and ſeven Years of Age: But it was unanimouſly agreed, that a Child ſo young could not be admitted to be an Evidence; and the Child's Teſtimony was rejected without inquiring into any Circumſtances to give it Credit. And it was merely upon the Authority of *Hale*'s *P. C.* where it is ſaid, that a Child of ten Years of Age may be a Witneſs, that the other Child of that Age was admitted to be a Witneſs in the firſt Indictment.

And in the preſent Caſe the Child was refuſed to be admitted a Witneſs, and there not

not being Evidence ſufficient without her, the Defendant was acquitted.

Eaſter, the twelfth of *George*.

Bredon *qui tam*, *againſt* Herman.

At Guildhall, before Eyre Chief Juſtice.

A former Recovery not to be given in Evidence on *Nil debet* in a *Qui tam*.

ACTION *Qui tam* for not regiſtering Articles of Apprenticeſhip according to the Stamp Act. The Defendant pleaded *Nil debet*, and upon the Trial he offered in Evidence, a Record of a Recovery againſt him for the ſame Forfeiture by another Perſon, and ſo endeavoured to diſcharge himſelf by this, under the Plea of *Nil Debet*; and it was inſiſted for him that if it appeared that there was a Recovery againſt him by another Perſon for the ſame Forfeiture, he was thereby diſcharged againſt all Men, and owed nothing upon Account; and therefore it was very proper to give this Record in Evidence upon *Nil debet*.

But *Eyre* Chief Juſtice denied this Record to be given in Evidence, and ſaid the Defendant ought to have pleaded it, if he would take Advantage of it, for if it had been pleaded, the Plaintiff would have been at Liberty to have *replied Nul tiel Record*, or that it was a Recovery by Fraud to defeat a real Proſecutor, which he could not be prepared to ſhew upon this Iſſue.

Trinity, the twelfth of *George*.

The King *againſt* Newport.

At Guildhall, before Raymond Chief Juſtice.

Information for a Libel called the *Poſt Boy*, when Defendant was only concerned in one Paragraph thereof, not ſufficient.

INformation for a Libel, ſetting forth that the Defendant cauſed to be printed and publiſhed a ſcandalous Libel called the *Poſt-Boy* of ——— to ——— in which is contained the following ſcandalous Paſſage, and ſo ſets out the Paragraph.

Upon the Trial it appeared the Defendant brought the Paragraph to the Printer, and deſired him to publiſh it in the *Poſt-Boy*; and the Chief Juſtice was of Opinion this Evidence did not ſupport the Information which charges him as the Publiſher of the whole Paper, whereas it now appears he was concerned only in a Part of it. So the Defendant was acquitted.

The ſame Term.

Manwairing *againſt* Sands.

In Middleſex, before Raymond Chief Juſtice.

Huſband not chargeable for Goods ſold to adulterous Wife.

IN an Action againſt the Huſband for a laced Head ſold to the Wife, it was proved that the Wife lived from her Huſband

band in Adultery, and that ſhe told the Plaintiff ſhe had a Huſband, but that ſignified nothing, for ſhe would pay him herſelf: The Chief Juſtice held the Defendant not chargeable, and ſaid he ſhould have ruled it ſo if there had been no actual Notice, which only ſtrengthened the Caſe.

The ſame Term.

Pepys *againſt* Sir John Lambert.

At Guildhall, before Raymond Chief Juſtice.

Within what Time a Note ought to be demanded.

THE third Indorſee of a promiſſory Note, kept it from the firſt of *November* to the ſeventh of *January*, without receiving it of the Maker of the Note; and in an Action againſt the firſt Indorſee, without Notice, the Plaintiff was nonſuited for his Neglect.

The ſame Term.

Jenkins *againſt* Purcel.

At Guildhall, before Raymond Chief Juſtice.

Practice at *Niſi Prius.*

WHILST the Jury were ſwearing, the Defendant's Council called for the Record, and finding a Miſtake in it, ſaid they would make no Defence. The

Plaintiff's Counſel upon this, in order to avoid a Nonſuit, and to ſave the Coſts, refuſed to pray a *Tales*, and though twelve had been ſworn, yet there having been no actual Prayer of a *Tales*, the Cauſe was ſuffered to remain for want of Jurors.

Lindſey *againſt* Talbot.

Attorney not allowed to give Evidence againſt his Client.

ON a Trial at Bar the Court refuſed to hear the Evidence of an Attorney, of Matters revealed to him by his Client, and *Trin.* 3 *George*, *Aſtrey* againſt *Alſop*, an Attorney turned off by the Plaintiff offered to give Evidence againſt her; and *Parker* Chief Juſtice refuſed to hear him, and reproved him.

Michaelmas, 1704.

Combs *againſt* Spencer.

Where Inrollment of a Deed is Evidence.

HELD by *Trevor* Maſter of the Rolls, that the Inrollment of a Deed is only for ſafe Cuſtody, and therefore a Copy of the Inrollment is no Evidence unleſs the Deed itſelf be loſt.

Eaſter,

Easter, the ninth of *George*.

Harris *against* The Biſhop of Lincoln.

In Chancery.

PAROL Evidence was admitted to prove who was intended by the Deſcription in a Will of the Heir *ex parte Maternâ*. Parol Evidence admitted to explain a Will.

Hilary, 1708.

Kerk *against* Clarke.

In Chancery.

PAROL Evidence was allowed to prove a ſubſequent Conſideration for a voluntary Settlement. And to prove a Conſideration.

Hilary, the fifth of *George*, *B. R.*

The King *against* Holiday.

ON Indictment for a Conſpiracy in indicting *A. A.* cannot be a Witneſs. Conſpiracy in indicting *A.* he cannot be a Witneſs.

Mich. the thirteenth of *George*.

Storey *against* Atkins.

PRomiſſory Note may ſtill be given in Evidence on an *Indebit' Aſſumpſit*. Promiſſory Note Evidence on *Indeb' Aſſ.*

The same Term.

The King *against* Reeks.

How to authenticate an Admission that is not stampt at the Time.

UPON a Trial Bar on an Information in Nature of a *Quo warranto*, for the Office of Burgess of *Christ-Church*, the Admission of the Defendant was produced, and it appeared to be a Parchment that had only one Stamp, and yet had five Admissions entered upon it, and in Order to make it good, they had annexed four other Parchments, each of which was stamped; and the Court held that would not make it good, and that the proper way would have been to have paid the four Penalties, and had four new Stamps on the first Parchment, as was done in the Bishop of *Chester*'s Case; and for want of this there was a Verdict against the Defendant.

The same Term.

Batson and others *against* Sayer.

In Middlesex, before Raymond Chief Justice, B. R.

There may be a select Vestry, and what is laid only as a Circumstance need not be proved.

IN an Action for a false Return of a *Mandamus* to swear the Plaintiff into the Office of Church-Warden, the Plaintiff set out

out that he was elected, and preſented himſelf to be ſworn, but was refuſed, and the Return to the *Mandamus* was, that he was not elected.

The Chief Juſtice held, that by Law there may be a ſelect Veſtry, and that in this Caſe the Plaintiff need not prove the preſenting himſelf to be ſworn, becauſe that is but a Circumſtance, and not to the Point of Truth or Falſity of the Return.

The ſame Term.

The King *againſt* Rhodes.

At the Old Bailey.

INdictment for forging a Letter of Attorney, whereby he transferred Mr. *Heyſham*'s Stock; and Mr. *J. Forteſcue* refuſed to let Mr. *Heyſham* be a Witneſs.

Party whoſe Name is to a Deed no Witneſs to prove it a Forgery.

The ſame Term.

Oſborn *againſt* The Governor, *&c.* of Guy's Hoſpital.

At Guildhall, before Raymond Chief Juſtice.

THE Plaintiff brought a *Quant' Meruit* for Work and Labour in tranſacting Mr. *Guys*'s Stock Affairs in the Year 1720. It

Where a Man does Work in Expectation of a Legacy, he cannot ſue the Executor.

It appeared he was no Broker, but a Friend, and it looked ſtrongly as if he did not expect to be paid, but to be conſidered for it in his Will; and the Chief Juſtice directed the Jury, that if that was the Caſe they could not find for the Plaintiff, though nothing was given him by the Will, for they ſhould conſider how it was underſtood by the Parties at the Time of doing the Buſineſs, and a Man who expects to be made amends by a Legacy cannot afterwards reſort to his Action.

The ſame Term.

Burrows *againſt* Jemino.

In Chancery.

A Man cannot be ſued here on his Acceptance of a Bill of Exchange abroad, after he has been diſcharged by the Laws of that Country.

A Bill of Exchange was drawn upon the Plaintiff at *Leghorne* which he accepted, but by the Law there, if a Bill be accepted, and the Drawer fails, and the Acceptor has not ſufficient Effects of the Drawer in his Hands at the Time of the Acceptance, the Acceptance becomes void.

And this happening to be the Plaintiff's Caſe, in order to diſcharge himſelf of this Acceptance he inſtituted a Suit at *Leghorne*, and his Acceptance was thereupon vacated by a Sentence in that Court.

After-

Afterwards the Plaintiff returned to *England*, and was ſued here at Law, upon this Bill; and thereupon he exhibited his Bill in this Court for an Injunction and Relief.

King Lord Chancellor was clearly of Opinion, that this Cauſe was to be determined according to the local Laws of the Place where the Bill was negotiated: And the Plaintiff's Acceptance of the Bill having been vacated and declared void by a competent Juriſdiction, he thought that Sentence was concluſive and bound the Court of Chancery here: And to this Purpoſe he inſtanced the Caſe of one *Hutchinſon*, which was in the 29th of *Car.* 2. and is mentioned in *Show.* 6. where *Hutchinſon* having killed a Perſon in *Spain*, was there proſecuted, tried and acquitted for the Murder, and afterwards returning to *England*, he was indicted again for the ſame Murder here; to which Indictment he pleaded the Acquittal in *Spain* in Bar; and the Plea was allowed to be a good Bar to any Proceedings here.

And upon the Attorney General's inſiſting, that the Plaintiff might have taken Advantage of this Matter upon a Trial at Law, and therefore not relievable in a Court of Equity,

The Chancellor declared, that if he was to try the Cauſe at Law, he would allow

the Plaintiff the Benefit of this Matter upon the Trial; but as other Judges might be of a different Opinion, he would not put the Plaintiff upon the Difficulty and Hazard of a Trial. And he ſaid he remembered a Caſe which came before him in the Lord Mayor's Court when he was Recorder of the City of *London*; where a Mariner ſued in the Admiralty Court for his Wages, and there being a Sentence againſt him there, he afterwards brought his Action in the Mayor's Court for the ſame Wages; and his Lordſhip (as Recorder) being doubtful whether he ſhould allow the Defendant to give the Sentence in the Admiralty Court in Evidence upon *non Aſſumpſit*, aſked the Opinion of Chief Juſtice *Holt*, who ſaid that whatever defeated the Promiſe might be given in Evidence on *Non Aſſumpſit*, and that the Sentence in the Admiralty Court would be good Evidence.

And in this Caſe a perpetual Injunction was granted to injoin the Defendant from ſuing upon this Bill. In Chancery, 22d of *November* 1726.

Hilary,

Hilary, the thirteenth of *George*.

Toms and another *againſt* Mytton.

At Weſtminſter, before Raymond.

A Debt contracted after an Act of Bankruptcy, is no ground for a Commiſſion.

IN Trover by the Aſſignees under a Commiſſion againſt *Albertus Burnaby*, it appeared he was a Bankrupt in *January* 1724, and the Debt of the petitioning Creditor was a Note dated in *September* 1725, and the Chief Juſtice was of Opinion it was a void Commiſſion, the Acts of a Man after an Act of Bankruptcy being void. So the Plaintiffs were nonſuited.

The ſame Term.

Kellock *againſt* Robinſon.

At Guildhall, before Eyre Chief Juſtice, C. B.

Where Part of a Note is received of one liable, another is not to be reſorted to for the reſt.

IN an Action by the Indorſee of a promiſſory Note againſt the Indorſor, it appeared the Plaintiff had, after the Indorſement, received Part of the Maker of the Note, and it was held to be a taking upon himſelf to give the whole Credit to the Maker of the Note, and abſolutely diſcharged the Indorſor, ſo the Plaintiff was nonſuited.

Swayne

Swayne and another *againſt* Wallinger.

Note of above ſix Years ſtanding ground for Commiſſion of Bankruptcy.

A Commiſſion of Bankruptcy iſſued in 1726, and the Debt of the petitioning Creditor appeared to be a promiſſory Note in 1714, and the Chief Juſtice allowed it to be good, ſaying that though ſix Years were paſſed he could not preſume it to be barred.

Eaſter, the thirteenth of *George*.

Warneford *againſt* Warneford.

In Middleſex, before Raymond Chief Juſtice.

Sealing a Will is Signing.

ON an Iſſue directed out of Chancery, *Deviſavit vel non*, the Chief Juſtice ruled that Sealing a Will is a Signing within the Statute of Frauds and Perjuries. 3 *Lev.* 1.

Trinity, the thirteenth of *George*.

Duke of Rutland *againſt* Hodgſon.

The Tender of Stock muſt be at the laſt Part of the Day that it can be accepted.

AN Action was brought on a *South-Sea* Contract in theſe Words, ‘ I promiſe ‘ to pay to the D. of *R.* ten thouſand ‘ Pounds, upon his transferring to me, or ‘ my Order, one thouſand Pounds Capital

‘ *South-*

'*South-Sea* Stock, ſome time on or before 'the ſhutting of the Company's Books for 'the next *Chriſtmas* Dividend.'

The Tender and Transfer were made at one, but it being the Day of ſhutting the Books, there was more Buſineſs than could be tranſacted in the Morning, and therefore the Books were opened in the Afternoon, and ſeveral Transfers were made. Upon the Trial of this Cauſe the Jury found for the Plaintiff. But a new Trial was granted, becauſe after the Transfer was vacated at one, the Defendant might have come and accepted the Stock; and though the general Rule of Law, that Tenders muſt be at the laſt Inſtant of Time, has been broke in upon, and made to relate to the laſt Part of the Day whereon in theſe Caſes the Act can be done, yet that is only out of Neceſſity, of which there was none in this Caſe.

Mich. the firſt of *George* the Second.

Gee *againſt* Brown.

At Guildhall, before Eyre Chief Juſtice, C. B.

IN an Action on an inland Bill of Exchange by Indorſee againſt Drawer, it appeared the Bill was payable the 14th of *May*:

Within what Time a Bill muſt be tendered.

May: That on a Promiſe of Payment the Indorſee gave him to the 18th, from thence to the 20th, thence to the 24th, and thence to the 7th of *June*, when the Acceptor failed, and there being no Notice to the Drawer, the Chief Juſtice held it to be the Loſs of the Indorſee.

Hilary, the firſt of *George* the Second.

Wilſon *againſt* Poulter.

In Middleſex, before Raymond Chief Juſtice, B. R.

No Parol Evidence to explain Depoſition.

IN Trover the Defendant was charged with his Confeſſion in a Depoſition taken before Commiſſioners of Bankruptcy; and the Chief Juſtice refuſed to let the Defendant in to Parol Evidence to explain it.

Trinity, ſecond of *George* the Second.

Maylin *againſt* Eyloe.

At Guildhall, before Raymond Chief Juſtice.

What an Act of Bankruptcy?

ON the 28th of *November*, *Hall* rode out of Town, and returned in the Evening, before which a Bailiff had been at his Shop to arreſt him. The next Morning he ſent for the Bailiff, and told him he went out in order to get the Term of the

Plaintiff, and now the Return of the Writ was out, if they would take out a new one he would give Bail, which was done accordingly; and this was held to be an Act of Bankruptcy within 1 *Jac.* which ſpeaks of '*departing from his Houſe with Intent, and* '*whereby his Creditors may be defeated or* '*delayed from recovering their juſt Debts.*'

Mich. ſecond of *George* the Second.

Parker *againſt* Godin.

What meddling with the Effects of a Bankrupt is a Converſion.

SATUR, a Bankrupt at the Time of his going off, left ſome Plate with his Wife, who in Order to raiſe Money upon it delivered it to her Servant, who went along with the Defendant to the Door of Mr. *Woodward* the Banker, and there the Defendant took the Plate into his Hands, and went into the Shop and pawned it in his own Name, gave his own Note to repay the Money, and immediately upon the Receipt of it went back to the Bankrupt's Wife, and delivered the Money to her. And in Trover for the Plate, the Jury (conſidering the Defendant acted only as a Friend, and that it would be hard to puniſh him) found a Verdict for the Defendant. But upon Application to the Court a new Trial

was granted upon the Foot of its being an actual Converſion in the Defendant, notwithſtanding he did not apply the Money to his own Uſe; and upon a ſecond Trial the Plaintiff obtained a Verdict for the Value of the Plate.

Mich. ſecond of *George* the Second.

Garnham *againſt* Bennett.

Where Maſter and Owners of a Ship are both liable for Repairs.

ON a Motion for a new Trial it was held, that *prima facie* the Repairer of a Ship has his Election to ſue the Maſter who employs him, or the Owners. But if he undertakes it on a ſpecial Promiſe from either, the other is diſcharged.

Hilary, ſecond of *George* the Second.

Searle *againſt* Lord Barrington.

The Indorſement of Intereſt being paid within twenty Years, ſhall be given in Evidence, though under the Hand of the Obligee.

THE Plaintiff brought an Action on a Bond entered into, to her Huſband, by one *Wildman*, under whom the Defendant claimed, and the Bond was dated the 24th of *June* 1697. The Defendant pleaded *ſolvit ad Diem*, and relied upon the Preſumption, it being after twenty Years; to

encounter which, the Plaintiff at the firſt Trial of the Cauſe, which was in *Trinity* 10 *Geo.* 1. offered to give in Evidence the Indorſement of Intereſt under the Hand of the Obligee in the Year 1707, which was three Years before the Death of the Obligor. But *Pratt* Chief Juſtice, before whom it was tried, being of Opinion it ought not to be given in Evidence, from the Danger of letting the Obligee make Indorſements, which might be done at any Time; the Plaintiff was nonſuit, and afterwards moved the Court, againſt the Opinion of the Chief Juſtice; and upon Debate the other three Judges were of Opinion it ought to have been left to the Jury, for they might have Reaſon to believe it was done with the Privity of the Obligor; and the conſtant Practice is for the Obligee to indorſe the Payment of Intereſt, and that for the Sake of the Obligor, who is ſafer by ſuch an Indorſement than by taking a looſe Receipt. But an Objection ariſing, that after a Nonſuit the Plaintiff was out of Court, and could not have a new Trial, no Rule was made, but ſhe was left to bring a new Action.

Accordingly a new Action was brought, and tried at *Guildhall*, before Chief Juſtice *Raymond*, who ſuffered the Indorſement to be read, and the Jury found for the Plain-

tiff. The Defendant tendered a Bill of Exceptions which was ſealed, and after Judgment for the Plaintiff a Writ of Error was brought in the Exchequer Chamber, and the Bill of Exceptions returned as Parcel of the Record. And upon Argument, Chief Juſtice *Eyre*, Chief Baron *Pengelly*, the Juſtices *Denton*, *Hale* and *Price* were of Opinion to affirm, and the Juſtices *Carter* and *Comyns* to reverſe. So the Judgment of the King's Bench was affirmed this Term.

N. B. Hilary, 13 *Geo.* 1. In the King's Bench *Turner* againſt *Criſp*, the Chief Juſtice refuſed to let the Indorſement of a Receipt of Part of the Bond, after the Preſumption had taken Place, to be given in Evidence, ſaying it differed from this Caſe, where the Indorſement appeared to be made before it could be thought neceſſary to be made uſe of to encounter the Preſumption.

The ſame Term.

Coleman *againſt* Sayer.

At Guildhall, before Raymond Chief Juſtice.

Within what Time a Bill muſt be tendered.

A Bill was drawn payable at ſix Days Sight, and preſented and accepted the eighth

eighth of *February*, which made it payable the 14th, and the three Days of Grace brought it to the 17th, which was a *Saturday*, and the Acceptor ſtopt Payment on the *Tueſday* following, before which the Bill was not tendered.

And upon this Evidence it was left to the Jury, who were of Opinion that the Drawer was diſcharged at the End of the three Days of Grace.

Eaſter, ſecond of *George* the Second.

Jones *againſt* Maſon.

At Niſi Prius in Middleſex, before Raymond Chief Juſtice.

J. W. of *H.* in *Middleſex*, (who had been convicted for Forgery) was a ſubſcribing Witneſs to a Bond, and on producing the Record of his Conviction, the Plaintiff was allowed to prove his Hand as if dead.

If the Witneſs to a Deed becomes infamous, he is to be conſidered as dead.

Mich. ſecond of *George* the Second.

Le Gliſe *againſt* Champante.

At Guildhall.

THE Plaintiff brought an Action againſt the Defendant, who was a Cuſtom-

Where probable Cauſe is not ſufficient.

houſe Officer, for ſeizing ſeveral Hogſheads of *French* Wine, upon Pretence of their being Lees, which upon an Information in the Exchequer, had been determined againſt the Officer; and now upon Debate it was held, that in theſe Caſes the Officer ſeizes at his Peril, and that a probable Cauſe is no Defence.

Where another Partner muſt be pleaded in abatement.

It appeared on the Evidence, that the Plaintiff had a Partner in theſe Wines who was no Party to the Action; and the Chief Juſtice held, that if it was in an *Aſſumpſit* it might be taken Advantage of at the Trial, for it would not be the ſame Contract; but it ought to be pleaded in Abatement in the Caſe of a *Tort*.

Hilary, ſecond of *George* the Second.

Field *againſt* Curtis.

Bankrupt cannot prove Act of Bankruptcy.

HELD that the Releaſe of the Bankrupt will not make him a Witneſs to prove the Act of Bankruptcy.

Hilary,

Hilary, third of *George* the Second.

Coleman and another *againſt* Mawby and another.

UPON executing a Writ of Inquiry before the Chief Juſtice, the Plaintiff could not prove the Quantity of the Goods, for want of a Servant who was abſent, through an Apprehenſion they ſhould not want his Teſtimony. And upon Conſideration the Chief Juſtice held, that he might adjourn it to the next Sittings, and accordingly the Jury were adjourned over, the Plaintiff ſubmitting to pay Coſts: He compared it to the Caſe of a Coroner's Inqueſt or a Commiſſion of Lunacy, where the Jury are adjourned over ſeveral Times, it being but an Inqueſt of Office.

Execution of a Writ of Inquiry may be adjourned after it is entered upon.

The ſame Term.

Caſtell *againſt* Bambridge.

IT was ruled that a Quaker could not be a Witneſs in an Appeal of Murder.

Quaker no Witneſs in Appeal.

Trinity, fourth of *George* the Second.

Slater *againſt* Swan.

At Guildhall, before Raymond Chief Juſtice.

On not Guilty for beating a Horſe, Defendant may juſtify in Evidence.

ACTION upon the Caſe, for that the Plaintiff was poſſeſſed of an Horſe and Cart, and Defendant ſo violently beat the Horſe that the Plaintiff was deprived of the Uſe of his Cart and Horſe for ſeveral Days.

The Defendant pleaded Not guilty, and the Chief Juſtice allowed him to give in Evidence a Juſtification for beating the Horſe, (*viz.*) That the Plaintiff put his Cart before Defendant's Door, and prevented a Cart Defendant had hired, from coming to take his Goods; and therefore he whip'd the Horſe to remove the Cart; and ſaid this differed from Treſpaſs *Vi & Armis*, for aſſaulting a Man, where the Aſſault is a Cauſe of Action; but here the Aſſault on the Horſe is no Cauſe of Action, unleſs accompanied with a ſpecial Damage, and therefore he left it to the Jury on the Queſtion, Whether the Defendant did any more than was neceſſary to remove the Horſe and Cart from his Door, or beat the Horſe immoderately? and they found

for the Defendant. He ſaid if a Hackney Coach ſtands before a Tradeſman's Door, and hinders Cuſtomers, he may lawfully take hold of the Horſe and lead him away.

The ſame Term.

King *againſt* Wilſon.

At Guildhall.

IT was held by Lord Chief Juſtice *Raymond*, that a Parol Promiſe to pay the Debt of another in Conſideration of Forbearance, was void by the Statute of Frauds and Perjuries.

The Statute of Frauds and Perjuries makes a parol Promiſe to pay another's Debt void.

The ſame Term.

Child and another *againſt* Hardyman.

At Guildhall, before Raymond Chief Juſtice.

ACTION for Linen ſold to the Defendant's Wife; upon *Non Aſſ.* the Delivery was proved, and the Defendant proved that ſhe had lived in a very lewd Manner, one Mr. *Not* frequently coming to her at her Huſband's Houſe, and were locked up together

What Elopement prevents the Huſband's being charged with Debts contracted by the Wife.

together in a Bed-Chamber, and other Indecencies paſſed between them. And it was alſo proved, that ſhe ſeveral Times went to the Houſe of this *Not*, a Gentleman in *Wiltſhire*, who lived within three Miles of the Defendant's Houſe; it did not appear further than that he diſliked her going and ſtaying at Mr. *Not's*; but under theſe Circumſtances they continued to live together; afterwards, on the 18th of *October* 1726, ſhe went away from him, and went to *Marlborough*, where ſhe reſided for ſome Time. But after the leaving her Huſband's Houſe it did not appear that ſhe ever ſaw Mr. *Not*, or lived in a lewd Manner; but after ſome Time ſhe ſent an Attorney to her Huſband to deſire that he would receive her again; the Huſband told him, that if ſhe came again ſhe ſhould never ſit at the upper End of his Table, nor have the Government of the Children, but ſhould live in a Garret. Then the Attorney propoſed to him to make her an Allowance, and propoſed about eighty or one hundred Pounds *per Ann.* he being worth about five or ſix hundred Pounds *per Ann.* but that was not complied with, and afterwards ſhe came to *London*, and bought the Linen to the Amount of fifty-three Pounds.

Chief

Chief Juſtice was of Opinion that the Plaintiff ſhould be called, and accordingly he was nonſuited.

He held if a Woman elopes from her Huſband, though ſhe does not go away with an Adulterer, or in an adulterous Manner, the Tradeſman truſts her at his Peril, and the Huſband is not bound; and this has been ſo adjudged in two or three Caſes.

Indeed if he refuſe to take her again, from that Time it may be an Anſwer to the Elopement. But in this Caſe he does not abſolutely refuſe to receive her again, but that ſhe ſhould neither ſit at his Table, nor have any Government of the Children, but ſhould be kept in a Garret; and ſhe deſerves no better Uſage. And the Plaintiff was nonſuit.

Eaſter, fourth of *George* the Second.

Medlicot's Caſe.

In Chancery.

A Commiſſion of Bankruptcy was ſuperſeded, becauſe granted upon the Petition of an Aſſignee of a Bond, who, though he is an equitable, yet is no legal Creditor.

Aſſignee of a Bond cannot be petitioning Creditor.

Trinity,

Trinity, fifth of *George* the Second.

The King *againſt* Hudſon.

At Guildhall, before Raymond Chief Juſtice.

Where the Original of a Way is accounted for, the Preſcription is deſtroyed.

ON an Information for ſtopping up a common Foot-way, the Proſecutor proved that it had been a common Paſſage under the Defendant's Houſe as far back as any Witneſſes could remember. But the Defendant producing a Leaſe made for fifty-ſix Years of this way, to the Intent it might be a Paſſage during the Term, and the Term expiring in 1728, the Chief Juſtice held the Defendant Not guilty: And as to the leaving it open ſince, he ſaid that would not be long enough to amount to a Gift of it to the Publick.

The ſame Term.

Lowfield *againſt* Bancroft and others.

At Guildhall.

The Damages cannot be given ſeparately againſt ſeveral Defendants.

IN an Action for a malicious Proſecution the Jury would have found eight hundred Pounds Damages againſt one Defendant, and one hundred Pounds againſt each of the others; but the Chief Juſtice ſaying it could not

not be done, the Jury gave a general Verdict for eleven hundred Pounds.

Hoar *againſt* Dacoſta.

Within what Time a Goldſmith's Note muſt be demanded.

WOODWARD's Note was paid to the Plaintiff at twelve on the *Friday*, who put it into the Bank at one, and the next Morning at ten the Runner of the Bank carried it to the Shop, with other Notes, to the Value of two thouſand ſix hundred Pounds, and left them (as uſual) to call again for the Money: He called at eleven, and they ſaid their Servant was gone to the Bank; he called again at two, and they ſaid they were going to ſhut up, and refuſed to pay, but paid ſmall Notes for two Hours, and then ſtop'd; and the next Morning Notice was given to the Defendant, who had paid the Note to the Plaintiff; and now in an Action for the Money, the Queſtion was, Whether this was Payment to the Plaintiff? It was inſiſted for the Defendant, that he ſhould not ſuffer by the Plaintiff's paying it into the Bank, who ſent it with other Notes; whereas if the Note had been tendered by itſelf it would have been paid.

E contra it was objected and inſiſted, that if there had been no Demand, there would have been no Laches, being within a Day

a Day after the Receipt that the Goldſmiths ſtop'd Payment. The Chief Juſtice ſaid there was no ſtanding Rule, but left it to the Jury, who found for the Plaintiff to the Value of the Note.

Harris *againſt* Benſon.

Intereſt, when to be allowed.

IN an Action againſt the Drawer of a Note, after an Acceptance, the Chief Juſtice ruled, that for want of a Proteſt, according to 3 & 4 *W.* & *M.* the Drawer could not be charged with Intereſt. Then the Plaintiff would have had it as for Money lent, and that appeared to be the Conſideration of the Note. But the Chief Juſtice ſaid it had never been allowed barely for Money lent without a Note; ſo the Plaintiff had no Intereſt allowed him.

F I N I S.

THE INDEX.

A.

Aſſign-

In

B.

C.

D.

E.

F.

G.

H.

I.

L.

M.

N.

O.

P.

Q.

R.

In

If

In

V.

W.

FINIS.

be a
141
148
s, he
155
157